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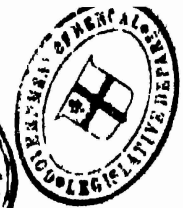

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1875.

WITH INDEX.

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LAWS AND REGULATIONS.

1875.

Abstract of the Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 5th January 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble John Inglis, C. S. I.
The Hon'ble R. A. Dalyell.
The Hon'ble H. H. Sutherland.
The Hon'ble J. R. Bullen Smith.
The Hon'ble Sir Douglas Forsyth, K.C.S.I.

NEW MEMBER.

The Hon'ble SIR DOUGLAS FORSYTH took his seat as an Additional Member.

DISTRESSES (PRESIDENCY TOWNS) BILL.

The Hon'ble MR. HOBHOUSE said that, instead of the first two items in the list of business, he wished now to present a Supplementary Report of the Select Committee on the Bill to regulate Distresses for Rents in the Presidency Towns. The publication of the former Report of the Select Committee and the observations made in Council had elicited some new suggestions, and the Committee had found it desirable to make further alterations. He desired to allow some further time to elapse before asking the Council to take the Committee's Reports into consideration.

INDIAN LAW REPORTS BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to diminish the multitude and improve the quality of Law Reports and to extend the area of their authority.

HIGH COURTS CRIMINAL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE also presented a further Report of the Select Committee on the Bill to regulate the procedure of the High Courts in the exercise of their Original Criminal Jurisdiction. He said that this was a Bill which the Council would remember was framed on the principle of applying a great many of the clauses of the Criminal Procedure Code to the High Courts in the exercise of their original criminal jurisdiction. In the Bill as introduced, the clauses of the Criminal Procedure Code were referred to merely by the numbers they bore in the Code. But owing to representations received from the High Courts of Calcutta and Bombay, which he was informed by his hon'ble friend, Mr. Dalyell, were concurred in by the highest judicial authority in Madras, the Committee had thought it right to alter the principle upon which the Bill was framed; and, instead of referring to the sections of the Code by their numbers, the Bill now set them out *in extenso*, making the alterations necessary in consequence of differences between the High Courts and the Courts of Session. That made the Bill very much larger and to a certain extent different from what it originally was. MR. HOBHOUSE had no doubt, from the work the Committee had to do in the matter, that the High Courts were perfectly right in urging upon the Committee to do what they had done, and the work would by this means be more complete than by incorporating merely by reference the clauses of the Code of Criminal Procedure. But the amount of alteration was substantial, and it would not be safe to go on with the Bill without a republication for a sufficient time, in order that the learned Judges might send in such suggestions as occurred to them. The Committee therefore recommended that the Bill be republished and not be brought again before the Council before a sufficient time should have elapsed.

OUDH LAWS, INLAND CUSTOMS, PANJAB LAWS AND OUDH LAND REVENUE BILLS.

The Hon'ble MR. HOBHOUSE also moved that the Hon'ble Sir Douglas Forsyth be added to the Select Committees on the following Bills:—

For declaring what laws are in force in Oudh.

For regulating Inland Customs Duties on Salt and Sugar, and for other purposes.

For the better administration of the law in the Panjáb.

To consolidate and define the law relating to the settlement and collection of Land Revenue in Oudh.

The Motion was put and agreed to.

The Council adjourned to Tuesday, the 19th January 1875.

WHITLEY STOKES,

CALCUTTA; *The 5th January* 1875. } *Secretary to the Government of India, Legislative Department.*

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

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PRESENT:

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The Hon'ble J. R. Bullen Smith.
The Hon'ble Sir Douglas Forsyth, K. C. S. I.

DISTRESSES (PRESIDENCY TOWNS) BILL.

The Hon'ble MR. HOBHOUSE moved that the Reports of the Select Committee on the Bill to regulate Distresses for Rents in the Presidency Towns be taken into consideration. He said that the Committee had made two separate reports, and he took the opportunity on one occasion of explaining to the Council what was the subject of the first report. The second report related to a new introduction into the Bill, in consequence of a valuable suggestion received from the Association of Attornies, of a clause to provide for the transfer to the High Court of cases in which the value of the property distrained exceeded one thousand rupees. They pointed out that under this Bill Small Cause Courts would have, or might have, to deal with large amounts of money; that the property distrained was sometimes very considerable; that we should in effect be enlarging the pecuniary jurisdiction of Small Cause Courts a good deal, and that it would be more satisfactory in such cases to enable them to be removed to the High Court. The Committee had therefore inserted a section to that effect, and that was the subject of their second report. He did not know, after what had been already said about the Bill, that he need do more now than give the Council a summary of the alterations

it made in the present law. He had already explained that it swept away a great deal of antiquated law, and relieved the statute-book of several statutes which contained a great deal of matter that was of no use, as much as was useful in them being comprised in the Bill. The alterations made by the Bill were these: First, the Committee provided that no distraint should be made for rent due for more than twelve months. That suggestion had been received from the Government of Madras, who had sent in a very thoughtful and carefully considered letter on the subject of this Bill. There seemed to be no such thing as a distraint for rent in Madras, and the Government of Madras thought, and a great many excellent lawyers thought, that the whole system of distresses for rent was a mistake, and that it would be far better to abolish the system altogether. MR. HOBHOUSE was not prepared to do that. The system prevailed largely in Calcutta, and also existed in Bombay; and he thought the Council ought not to interfere with it. That it did not prevail in Madras was a subject of congratulation; but he was not prepared to bring the law in Calcutta and Bombay into conformity with the practice in Madras.

The next alteration made by the Committee was to make it clear that the property to be seized should be the property of the debtor. There were sometimes cases which gave rise to disputes and to much hardship, where the property seized was the property of some person wholly unconnected with the rent for which the distress was issued. The Committee also provided that certain articles should be exempted from distress. Such articles were now exempted in cases of execution by law, and in practice they were usually exempted from distresses for rent. We did not take a coat off a man's back, and therefore the Committee had provided that things in actual use—a man's necessary wearing apparel and the like—which were protected from being seized in execution, should also be exempted in distresses for rent. That also had been suggested to them by the Government of Madras.

Then the Bill proceeded to deal with claims and disputes which arose out of distresses. The Committee had given to the Court which decided all other questions on the subject of the distress, namely, the Small Cause Court, power to adjudicate claims of third parties, and claims for damages or compensation where the distress was unlawful. Then there was the last alteration to which MR. HOBHOUSE had already referred, that when a distress exceeded a certain value, there should be power to transfer the case to the High Court.

These were the alterations in the law which the Bill proposed to make.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

INDIAN LAW REPORTS BILL.

The Hon'ble MR. HOBHOUSE also moved that the Report of the Select Committee on the Bill to diminish the multitude and improve the quality of Law Reports, and to extend the area of their authority, be taken into consideration, and said:—"As it is now some ten months since this matter was before the Council, it will probably be necessary that I should remind them of what has taken place, and recapitulate very briefly the objects and scope of the measure now proposed. It is the more necessary to do so, because there has been an amount of controversy raised in the papers sent in to the Select Committee akin to the controversy raised at this table; controversies, as I shewed before, quite unwarranted by anything comprised in this Bill, and to a very great extent irrelevant to it, and relevant only to a plan contemplated by the Executive Government, or to other plans erroneously attributed to it.

"Before explaining what it was that the Council were asked to do, I told them that it was only a small portion of a larger plan contemplated by the Government of India for improving the condition of the Law Reports. I explained the function of a Law Report, and shewed how it passed into and became part of the general law of the land; how important, therefore, it was to exercise judgment in the selection of cases to be reported, and to issue them with some stamp of authenticity upon them, so that only that which is useful and accurate should be looked on by the lawyer as a necessary part of his library; but that in this country the matter had been left to private speculation with only some pecuniary assistance given by Government; that consequently the public interest, which is to have nothing but good reports of nothing but useful precedents, had become entirely subordinated to the commercial interest of the publishers, which is to have the largest price at the smallest expense and trouble to themselves: that owing to the fact that all reports are received as of equal authority, one man's publications must be bought just as much as another's; and that the consequence was that we have reports bulky, expensive, and to a great extent useless, which nevertheless the profession are compelled to buy. Such is the result of the combination of the two prevailing principles; first, that law reporting is a fit subject for commercial speculation, and next that Law Reports are to be treated as binding authorities from whatsoever source they emanate.

"All this I proved in detail by evidence and authorities of various kinds; and I stated that the Government would attempt to apply a remedy by taking the business of reporting in the High Courts under their own supervision. If that were done, and done with reasonable efficiency, there would at any rate be a set of reports bearing some stamp of authority upon them, and they would be published by those who might be trusted not to allow commercial motives to outweigh their sense of the public interest. If, again, the Bar would use for the purpose of citation in Court, and the Bench would receive as authorities, only the authorized reports,—a thing entirely within their power,—the professional man, who did not desire to buy others, would not be compelled to do so.

"But such a scheme as that requires no legislation, and I explained that there were only two points on which the authority of the legislature was invoked, and that on one of those points I could hardly say that it was actually requisite.

"The point I have just referred to is that which is embodied in the third section of the Bill, which I will read to the Council.

'No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it, the report of any case decided by any of the said High Courts on or after the said day, other than a report published under the authority of the Governor General in Council.'

"Now that is only what the Courts, or at least the superior Courts, may now do for themselves if so minded. It is what the Bombay High Court, who object to this measure, say is the right thing to be done as between better conducted and worse conducted reports; such publications, for instance, as the Bengal Law Reports and the Calcutta Weekly Reporter. It is what they tell us they are themselves prepared to do as between those two publications, if only the Calcutta High Court will lead the way. But such things have been said over and over again, and occasionally Judges have been found who have tried to work the experiment. But they have never succeeded. There has not been sufficient unanimity or persistence in the attempt and there is no reason to suppose that there will be more now, if each Court or Judge is left to act entirely on his own motion. With a declaration of the legislature to support them, there will at least be a better chance. And we may by such a declaration free subordinate Courts from the terror and oppression of the numbers of obscurely reported cases with which it is said they are bombarded, so that they shall not be blamed if they refuse to receive those imperfect reports as binding authorities. Such a provision, therefore, as the one under consideration, may strengthen the hands of those who desire to have

good reports and good ones alone to guide them. And if we should succeed in supplying that essential article, a good report, and I always say we shall fail unless we do supply it, we may possibly succeed in getting it received as the only authoritative exponent of judicial law, however much others may be used for other purposes. I repeat that we may easily fail; we certainly shall fail unless the Bench and the Bar are disposed to act in the spirit of this section; but I ask the Council to pass it as embodying a principle which even opponents admit to be sound, and as giving some aid to those who desire to improve the present condition of law reporting in India.

"The other object for which the action of this Council is invoked, is not necessarily mixed up with any particular system of reporting; for it would, at least in my opinion, be desirable even if we had no such scheme of reporting as that now contemplated; and again the scheme may work well enough without any such new law. But it is connected with some system of reporting, though not with any particular system, and it naturally falls to be considered when we are dealing with the subject. It relates only to the geographical area within which the decisions of the superior Courts are to be accepted as binding authorities. At present a High Court—say the Court of Madras—may place an interpretation on a general law—say the Penal Code—and that interpretation will have no binding force out of the province. A Bengal Magistrate may disregard it or know nothing whatever about it, and *vice versâ* the Madras Magistrate is a stranger to the Bengal decisions. The reason for that state of things is to be found in the history of the country. The different presidencies had originally a very loose connection with one another, and when Crown Courts were established for them, the law which those Courts administered in common with one another was confined to the presidency towns or to the British people. At the present day all parts of British India are bound up much more closely together: they are subject to a common authority in India, both executive and legislative, and there are great Codes of Law enacted for the whole community. It is now therefore a decided drawback that when a valuable exposition of a portion of that general law has been made by one of the superior Courts, the whole community should not have the full benefit of it.

"I will mention a case which happened soon after I came to India, and which first drew my attention to the existence of this anomaly. It did not arise in connection with law reporting, and it illustrates the remark I made just now, that this portion of the Bill may rest on its own merits, independently of any particular system, and in connection with any system, of reporting.

"There are many actions committed by men, which, according to circumstances, may be crimes of a deep dye, or venial offences, or mere personal vices hardly to be classed among crimes at all. Yet for the legislature to distinguish accurately between such cases is quite impossible. The law must use some general expressions which, if they are to be very rigidly and literally interpreted, might have the effect of subjecting to severe punishment actions which ought only to be punished very lightly, or ought not to be punished by the hand of any human ruler at all. Such is the case with portions of the Penal Code. One section of it in particular, if its language be construed quite literally, visits with the liability to fine and to ten years' imprisonment, an action which in its simplest form is extremely common, which rather bears the character of a vice than of a crime, and so has usually been left by all laws other than ecclesiastical laws to carry its own chastisement with it. But under some circumstances this same action may be a crime of a most odious character, and one affecting society in a vital point. Well, it happened that a person who had committed this action in one of its simpler forms was charged before a Madras Magistrate and sentenced to a severe punishment. On appeal the High Court of Madras reversed this sentence, pronouncing a most sensible judgment, cutting down the literal meaning of the section, putting a reasonable interpretation on it, and confining its operation to what would be really grave offences. Afterwards, a similar case occurred in another province; and again the Magistrate convicted the accused and sentenced him to severe punishment. The Magistrate probably knew nothing of the Madras decision; but if he did know, he was entitled to disregard it, and he preferred the literal construction of the Code. Now, that is a serious matter. Draconian laws invariably bring the whole law into contempt, and set the sympathies of people to work against the law and in favour of offenders. The subject-matter is one on which accurate distinctions cannot be attained by the legislator, and on which I for one think that if we attempt to alter the Penal Code, we are quite as likely to mar it as to mend it. It is one, therefore, eminently fitted for judicial exposition, which can introduce a number of shades and qualifications unattainable in a statute. The thing wanted, therefore, is to bring the Madras decision home to the subordinate Courts in other Provinces, but that, as the law and practice at present stand, is impossible.

"Now I appeal confidently to all who hear me, and ask them whether it is not an inconvenient—not to say an absurd—thing, that a decision by the High Court of Madras on a very important Statute which affects the whole of British India alike, and which touches human actions of very frequent occurrence, should be received as law in Madras, and that, directly it

reaches the boundaries of that province, its authority should cease? Is it not clearly right that the whole of British India should have the benefit of an interpretation placed by a Court of the highest rank on a law passed by this Council for the whole of British India? Surely such a decision should be co-extensive with the law, and should carry with it whatever authority its own intrinsic merits and the degree of its harmony with other decisions of co-ordinate Courts may entitle it to have.

"This object, then, is aimed at by section 2 of our Bill, which I will now read.

'Every judgment delivered on or after such day by any of the said High Courts (whether by a Judge sitting alone, or by a Division Court, or by a Full Bench) and reported in the said Indian Authorized Law Reports, shall have the same authority in all subordinate Courts beyond the limits of the appellate jurisdiction of such High Court as independently of this Act it would have within such limits.'

"The Council will observe that, in this section and also in section 4, we carefully guard against giving to judicial decisions any more binding quality of authority than they have now. All we seek to do is to extend the area of their authority, and we do it by connecting it with our scheme for reports, and so securing that the decision which is to have this extended authority shall not be one reported at haphazard, but shall be as accurately given and in as useful a shape as a responsible reporter can make it.

"Well, but it may be asked whether this object requires legislation. I will not say that in any strict legal sense it does. It would, I suppose, be competent for the Courts here to say that they would receive one another's decisions as binding equally with their own, and in process of time such a practice would be recognized law, just as much as it is now law that the decision of a superior Court shall bind the Courts subordinate to its jurisdiction. Just in the same way the Courts of the United States have ruled that English decisions are binding authorities there, and that practice has passed into the law of the country; while the English Courts only receive the United States' decisions for purposes of instruction and not as binding authorities. But having regard to the history that I have referred to, and the long course of practice resulting from it, I say that that which is legally possible is practically impossible, and that unless the legislature does it, the thing will not be done at all.

"The main objection raised to this proposal is one which was indicated by my hon'ble friend, Mr. Dalyell, when the Bill was introduced, and I answered it at the time. But as it has been brought forward again in some quarters

entitled to the highest respect, I will again give an answer to it, and in somewhat more detail.

"It has been objected to this Bill that it provides no machinery to prevent contradictory rulings. But I never heard of anything that could prevent them. As long as we have independent minds giving decisions on the same subject, so long we shall have contradictory rulings. It does not seem to me desirable, if it were possible, to prevent such a result, nor, if it were desirable, would it be possible.

"It is quite true, then, that it is no part of our scheme to prevent contradictory rulings. It is also true that, when the ruling in one presidency may be quoted as binding authority in another, contradictory rulings are likely to be brought to a direct issue with one another more quickly than before. But that I look upon as one of the advantages to be gained. See the effect of the present system. You may now have two streams of decision at variance with one another, running on side by side in two contiguous territories nominally subject to the same Code of Law, and in which there is no reason why the same law should not prevail. • Referring, for instance, to the cases under the Penal Code which I have just stated, we find a class of actions which may be committed with legal impunity in Madras, and just over the border may be the subject of severe punishment. And yet the Penal Code is the law in both places. Referring, again, to an instance I quoted on a former occasion, we find two adverse currents of decision going on in Bengal and in the North-Western Provinces under the same section of the Rent Act; going on for several years, until one of the High Courts alters its views and adopts the views of the other. I say that it is much more for the benefit of the public that when such differences arise, as arise they must, they should be brought face to face, and that each Court should be compelled to revise its work in the light and under the pressure of the other's decision. Of course, if the difference of opinion is found to be final and irreconcileable, it must be settled by some superior authority: either by the Privy Council, which may operate on some cases, or by the legislature, which can operate on all. But, as I have just been showing, there are many cases in which a judicial exposition, if it can be got, is far better than an utterance by the legislature, and in which, therefore, the legislature would only act when its action was found to be absolutely necessary. And in other cases the legislature is not wise enough to know in which direction to settle a dispute until it has been threshed out by a sufficient number of judicial controversies, a point which I illustrated on a former occasion by reference to the history of provisional committees in England. It is therefore in every respect better that the contradictory interpretations of a law common to all

India should be brought into collision with one another in a direct, open, and speedy way, than that they should exist in the more embarrassing form of conflicting laws for places intended and supposed to be under the same law.

"But then it is said; how is an inferior Judge to guide himself? how he is to act when he finds the decision of his own appellate superior conflicting with that of another High Court? I answer that Judges are appointed to settle doubts, and that he must act as other reasonable men act when they find themselves in the presence of a doubtful and debateable question. I know how I should act. The conflict of authority might come to me in many different shapes. It might come on a point on which I myself had a very clear opinion that my own Appellate Court was wrong, and that it would on reconsideration adopt the conflicting judgment. In that case I should follow my own opinion. It might come on a point on which I could form no very decided opinion. In that case I should follow my own Appellate Court. I might find that the opinion of one Court was that of a single Judge not assisted by Counsel, and very briefly delivered; while that of the other was given by a number of Judges, unanimous in opinion, assisted by careful arguments of Counsel, and delivered in a carefully reasoned judgment. In that case I should follow the weightier judgment. I might find that my own Appellate Court had delivered its opinion deliberately, and after full consideration of the conflicting decision. In that case I should follow my own Appellate Court. Many other cases might be put in which a man would be guided one way or another by various circumstances. But no serious practical difficulty that I see would arise: certainly none which English Judges are not in the habit of encountering, and which Indian Judges may not now have to encounter, when the Divisions of their own Appellate Courts have differed in opinion.

"There is another class of objections put forward, which, if I really have understood them aright, are somewhat surprising. We are told that there are different schools of law and different customs prevailing in different parts of the country, and that it will be very dangerous if a decision given with reference to one school and one set of customs is to be quoted as binding authority for another. No doubt it would be very dangerous: but I cannot make out how the danger is increased by this Bill. Nobody supposes that a decision about a promissory note will be quoted as an authority in a horse-cause, though the Court which pronounced it has equal authority in both cases: why then should we suppose that a decision relating only to Hindús will be applied to Muhammadans, or that one relating only to Sunnis will be applied to Shiás, or that one relating only to the Benares school will be applied to the Bengal

school, or that one relating only to Bengal customs will be applied to Bombay customs? Local and personal laws and customs are not divided according to the local area of the jurisdiction of the High Courts. The Calcutta High Court, for instance, has Hindús and Muhammadans, Shiás and Sunnis, different schools of law and different local customs, within its jurisdiction. For each set of litigants it decides according to their own law. I have not heard that any confusion is thereby created because the Calcutta decision is authoritative throughout the whole of Bengal. Why then should any confusion be created by giving it precisely the same quality of authority in Bombay? The long and the short of the matter is, that if the law is the same for the two places, there must be conflicts of opinion about it, and then it is better to bring them to issue as quickly as may be; but if it is not the same, no conflict can occur.

"Such, then, is the Bill as the Select Committee presents it to the Council; and before I go on to speak of the plan with which it is connected, I will mention what alterations have been made in Committee. There are only two, and neither is important. One is, that instead of making it come into force on a given day, we say that it shall be brought into force by notification. The reason is that arrangements have to be made with the staffs of reporters. I am not aware of any difficulty in the way of such arrangements, but there has been some delay in making them, and we thought it would be more convenient not to bring the Act into operation until they were concluded. The other is that the Bill as introduced contained a definition of the expression 'Subordinate Court,' which affected the highest Courts of Appeal in the Panjáb and elsewhere. It was not necessary; it has been objected to, and it has been struck out. The clause being gone, I do not argue about the soundness of the objections; for I have so much still to say that I avoid all unnecessary matter.

"Now, I have been very particular in explaining to the Council the precise extent and character of the contents of the Bill, because they will find that the somewhat emphatic opinions which have been expressed against it are really not directed to anything contained in it, but to a scheme that it is connected with, and to a very erroneous conception of that scheme. The main objection really is to any interference at all by Government with the present system of reporting; and that, under the notion that our object is, not the simple one of getting fewer and better reports, but the very ambitious one of getting a control over the substance of the law by means of reports. And though I have shown that the scheme may well go on without the Bill, and that

the only piece of legislation in the Bill strictly so called is to be desired independently of the scheme, yet, connected as the two actually are together, I cannot be surprised if those who object to the scheme endeavour to tack their objections on to the provisions of the Bill.

"Now it might, perhaps, be sufficient on this part of the case to say that the Council have on two occasions accepted the principle of some legislation in connection with a scheme for the supervision of law reporting by Government. When I moved for leave to introduce the Bill, I detained the Council a long time, and I have no doubt they were very weary of me, while I proved in detail the case for interference by Government; and there was no opposition to the introduction of the Bill. When I introduced the Bill and moved to refer it to a committee, there was opposition, and if the Council then incurred any danger, it was not for lack of warning. My hon'ble friend, Sir George Campbell, then occupied that empty chair, and he set forth his objections with all the force of rhetoric of which he was so great a master. The Bill was a revolutionary Bill; it was an unconstitutional Bill; it set up an irresponsible judge over responsible judges; it placed an enormous power in his hands; and in short it would be a very wrong thing to send it into committee. Nevertheless, the Council did send it into committee. I conceive that, if any principle was decided on these two occasions, it was the principle that Government was right in attempting to take the supervision of law reporting into their own hands, and that assistance in some shape should be given to them. At the same time I always feel that in this assembly we discuss matters under great disadvantages, and that on many subjects the communications made to Select Committees have more of the essentials of a public discussion than anything which takes place at this table during the two first stages of a Bill. For this reason, though the previous decisions of the Council are certainly not to be disregarded, yet I am very reluctant to use them as preventing further debate when the ground-work of the measure is attacked from without. I therefore think it right to acquaint the Council with the principal objections made to the whole scheme of reporting under the supervision of Government. I will only ask you to bear in mind the arguments I adduced in its favour and the answer I made to objections advanced here—topics which I have no intention of discussing all over again.

"Neither will I detain the Council by reading the opinions of those who think the measure a right and good one. I will only say that the High Court of Calcutta and some eminent district officers in Bengal approve of its principle; and that the only body in India which has actual experience in

the business of law reporting, namely, the Calcutta Council, has cordially acted with the Government from the outset of the scheme. I will now refer to the objections, and first I take those which come from Madras.

"The High Court of Madras have not sent in any collective opinion. But I hold in my hand a Minute written by Mr. Justice Innes, who first states the objection arising from the differences of local laws—an objection I have already dealt with. He then proceeds thus—

'Nor do I believe that the evil aimed at will in the least degree be diminished. The Government Reports will be so scanty that the Profession and the public will demand more, and the demand will certainly be followed by the supply. It is useless for the law to say that the High Court shall not be bound to receive anything as authoritative but what is in the Government authorized Reports, if other Reports are still sold and consulted, and though not publicly quoted, still used as guides to a decision.

'The Government Reporters under a Central Editor, practically uncontrolled, will determine what to report and what to leave unreported. Important decisions adverse to and disapproved of by the Government may thus be excluded. Nor does there appear to be the smallest guarantee for the qualifications of the Reporters being equal to the delicate duties they will have to perform. I strongly disapprove of the Bill.'

"Mr. Justice Kindersley writes thus:—

'I object strongly to the third section, which places it in the power of the Government to exclude from the law any decision of which it disapproves. The matter is quite beyond the proper scope of legislation; and in my opinion the Act cannot fail to be mischievous.'

"And the Government of Madras say as follows:—

'His Excellency strongly deprecates the institution of the office of Central Editor with the powers of control and selection suggested for him. He is of opinion that, if a High Court interprets the law contrary to the intention of the legislature, the proper remedy is for the latter to pass a declaratory Act.'

"Now the Council will observe that Mr. Justice Innes makes two objections to the whole plan. The first is, that it will fail in checking the multitude of reports. I have already said that in my opinion it may easily do so, and certainly will, if treated hostilely by the Bench and the Bar; and I think that such a failure will be the worst that can come of the attempt we are about to make. The second objection is, that the scheme will not fail; it will not only not fail, but will be so terribly efficacious that no rival will exist in its presence; that the Government will become the sole mouth-piece of judicial law, and will be able to mould it as they please. And in this objection Mr. Justice Kindersley and the Government of Madras express their concurrence.

"Now, I wholly agree with Mr. Justice Kindersley in thinking that to place it in the power of the Government to exclude from the law any decision of which it disapproves is strongly objectionable, and is a matter quite beyond the scope of legislation; and with the Government of Madras in thinking that the proper remedy for inconvenient decisions (at least when they are final) is legislation. But I do not see how those opinions constitute any objection to the scheme of this Government, because it is absolutely certain that no such operations as they imply are contemplated, or will be attempted, or could succeed if they were attempted. But before I go further into the matter, I will read the opinion of the High Court of Bombay, who have enlarged somewhat more upon it—

'We agree in the opinion of the Government of India that it is desirable to diminish the quantity and improve the quality of the reports published for forensic use in British India; but while perfectly satisfied of the excellence of the intentions and single-mindedness of the Government of India in the matter, we think that the proposed legislation is unnecessary, objectionable in principle and unprecedented.

'Law reporting is, in a certain sense, a branch of legislation. Decisions in the Superior Courts of Justice in the United Kingdom and its Colonies, which endure the test of time and free discussion, no doubt become additions to the law; but it does not thence follow that law reporting should be, in any respect whatever, under the superintendence of the most frequent litigant in the Courts of this country, namely, the Government itself, or that the Reporters should be nominated or controlled by that litigant. A proposition more completely contrary to sound principle than that the Reporters should be either under the influence or control of Government, it is difficult to conceive. It is most undesirable to leave room for the belief that Government has secured to itself, or its nominees, the power of preparing or suppressing the reports of decisions which it may suppose to be hostile to its interests or policy. It may be said that it is not to be supposed that Government would stoop to make an improper use of such opportunities. We ardently hope that would be so; but if there be any part of the Brtish Empire in which such a power would be objectionable, it is in India, where the Government is more completely despotic than in any other country under British rule, and where it has not always the most favourable construction placed upon its acts. The legislators, in the case of what Bentham styles 'Judge-made law,' are the Courts, and if the circumstances of this country at present are such that law reporting cannot flourish as a private enterprise, and ought to be supported at the expense of the State, and, with a view to improvement in quality and diminution in quantity, to be placed under some control or superintendence, it manifestly should be placed under the control or superintendence of the Courts, and not of the Government. The tribunals which pronounce the decisions must know best whether or not they are correctly reported, and to what extent it is desirable that they should be reported.

'Honourable and pure as we are assured that the motives of the present Government of India must have been in introducing this Bill, and suggested, as legislation on the subject of law reporting very probably was, by persons not members of Government, yet it is manifest that, as regards law reporting, Government is in the position of Cæsar's wife,

and that no Government, present or future, ought to be 'subjected' either to the temptation or the suspicion of being able to suppress the publication of decisions adverse to it or involving principles which it may deem likely, at some future time, to be inconvenient. The nomination and dismissal of the Reporters ought to rest, as does that of all other officers of the High Courts under the Charters, with the Chief Justice of each High Court, and should not be vested in Government, nor ought it to take any part in the preparation or selection of the cases to be reported. Those who are acquainted with the earlier or later history of British India are not unfamiliar with the exhibition, by executive officers of Government, of jealousy of the Courts of law of this country, and it is an untoward, although of course merely a fortuitous, coincidence, that while Government, at the suggestion of such officers, is, on the one hand, seeking, so far as may be, to exclude by legislation the jurisdiction of Courts of law in matters of revenue, it is, on the other hand, by legislation also, essaying the establishment of a monopoly of all authentic law reporting, whereby (although we cannot suppose its intention to have been so) it will be empowered to suppress at pleasure the publication of the decisions in such Government cases as may still remain within the cognizance of those Courts, and as may be obnoxious to Government. It is said that it is in its Legislative Department that the Government of India is to undertake this new charge; but it is not and could not be asserted that the Legislative Council itself will exercise any supervision in the matter; and it would be wholly unsuitable that it should take any part in it. Law-reporting under this Bill would in fact be in the hands of nominees of the Executive Government, and the circumstance that the chief of those nominees might also be named by that Government to assist the Legislative Council in the performance of its duties, would not remove any one of the objections which exist to the proposed scheme.'

"Then the Government of Bombay, in forwarding this opinion, say as follows:—

'I am to state that these Reports seem to His Excellency in Council to raise many weighty arguments against the measure, and that he is constrained to express his entire concurrence in the objections taken to the centralization in one series of Reports of the decisions given in all parts of India, and to the right of control over the acts of the Reporter, which it is proposed to vest in the Executive Government, instead of in the Courts of Law.'

"From that last expression 'instead of in the Courts of Law,' I gather that the Bombay Government are labouring under a mistake. There is no control vested in the Courts of law; it is proposed to vest it, though not by this Bill, in the Government instead of in nobody.

"But to go on with the main objection as stated by the learned Judges. I accept with all sincerity their disclaimer of imputing any sinister motive to the Government. But then, what is the meaning of all this that I have been reading? Spotless as we are, what is the danger to be feared from us? Either all this must mean nothing at all, or it must mean that we are going to do a very wrong thing; that, being the most frequent litigants in the country, we

shall be tempted, and, in spite of all our purity and innocence, shall fall; that we shall garble reports; that we shall palm off our base coin upon the public as the true issue of the judicial mint.

"Now, if I were of a querulous disposition, I should complain a little of our friends in Madras and Bombay, that they have dealt us somewhat hard measure, for while they impute to us schemes of daring ambition, they do not credit us with as much common sense or worldly wisdom as would suffice to conduct the business of a retail haberdasher. I will not avail myself of the generosity of the Bombay High Court, but will suppose that, instead of being spotless as snow, we are very leopards or Ethiopians, and that we entertain nefarious designs of advancing our own interests through right and through wrong. What is it supposed that we shall do? First, it must happen that some evilly-disposed branch of Government finds that an inconvenient decision has been passed against it: the matter is of importance, but it is not advisable to appeal, nor to attempt any alteration of the law. But the bright idea occurs to them, that if they can only prevent the case from being reported, it will do them some good, though they must obey the decree, and though they must know that the same point, when it occurs again, will probably be determined the same way. So they apply to the Editor of the Reports, and the two conspire together to suppress the decision, though otherwise worthy to be reported and sent up by the Reporter as such. All this is done to gain what? Just the barest chance that the decision may be forgotten, and that when the same point happens to occur again, it will come before another Court who may decide it another way. But what is the risk run? If the decision is of the slightest importance, will the Court, the Bar, the vakíls, and the public forget all about it? The chances are a hundred to one against it. And then, what will become of our scheme? It will immediately become known that we are using reports to give onesided views of the law; the character of our reports will be blown upon; nobody will be content with authorised reports, because they cannot be trusted to give the really important cases; and reporting on the commercial principle will, by our own folly, be fixed on a firmer basis than ever. In fact, it is a matter of the greatest surprise to me how such an objection can be made otherwise than in the heat of debate and on the spur of the moment; and I feel it difficult to address myself with due gravity to so chimerical an apprehension.

"Well then it is objected that the scheme of the Government is not embodied in the Bill; but that objection does not proceed from any one who is friendly to the scheme. Members of Council have in their hands copies of some rules intended to shadow forth the sort of way in which the Government

proposed to start the work of supervision. They will observe that the whole thing depends very much on the relations between the Editor, the Reporters, and the Judges, which must be adjusted from time to time, perhaps at short intervals. At the present moment circumstances point to our learned Secretary as the fittest person to be Editor; but whether that can be a permanent arrangement cannot be told till after actual experiment. In fact it is a new thing, and there is no part of it which it may not be necessary to mould afresh according to circumstances. There is not the least reason why a process of pure administrative detail should be embodied in a law, and if I were asked how to ensure failure for the scheme, I should say that the best plan was to make it rigid and inflexible by law.

"Now I come to the only alternative scheme proposed by those who object so strongly to ours. It will be remembered that the Bombay High Court agree with us that it is desirable to diminish the quantity and improve the quality of the Law Reports. They only object to our method, and they say that the proper course is for the High Courts themselves to undertake the supervision of the reports. They write as follows:—

'We think that the statements of facts and of the arguments, and the head or marginal notes, should be submitted to and revised by the Judges who have presided in each reported case, as well as the judgments, which are, and for a long time past have been, so submitted and revised; and under this being done, we think that the reports should be stated on the title-page to be published under the authority of the Court. The first of the above alterations will subject the Judges to some additional labour, but it is a duty which we are perfectly willing to undertake. Looking to the position of the Editor of the Reports as an officer of the Court, we have no doubt that we have full power to make those alterations in the system at present existing here, and that the Reporter will be perfectly ready to carry our views into effect.'

"Well, that is a proposal often made and never, so far as I know, acted on with any persistency. We cannot make the Judges do this work. We have no such offer from any other High Court, and from what I learn from conversation with Judges here, I do not believe that they would, or properly could, undertake the business. And I must say that I feel a little sceptical about the time at the disposal of the Bombay High Court, with all their good-will. I hear of them sometimes in connection with other things besides Law Reports. I remember their making an application for an additional Judge on account of the arrears of business, which application was successful. I am not sure that there are no arrears now. I observe that their letter on this very subject concludes in these terms:—

'We must apologise for the delay in replying to your Excellency's communication as to the Bill, the subject of our letter. The pressure of our ordinary business is such that we have much difficulty in finding time to write upon new projects of legislation.'

"The letter is a very full and very able one, and it must have cost thought and time; but I fancy that it is a less laborious business than the supervision of a volume of reports. Therefore I cannot help feeling my doubts. At the same time, if the Judges of that Court will be so good as to give attention to the matter, and find that their more immediate business leaves them leisure for it, I most freely and frankly admit that it is sure to be better done than it could possibly be otherwise: their assistance will, I am sure, be most heartily welcomed; and the Editor will probably enjoy almost a sinecure as regards the Presidency of Bombay.

"Indeed, the Bombay Judges give us to understand that their reports are even now to a great extent supervised by them and are on a par with the best reports elsewhere. They may be very good, and if so, it is certain that there will be exceedingly little interference with them. But I still think they would be better for some amount of supervision, and will give an illustration of the way in which I conceive that supervision would work.

"I have not to consult Indian reports very often, and it so happens that, of the Bombay reports, I have only looked at one since I read the letter of the High Court. I wanted to ascertain the exact terms of the decisions on a particular point, and this case was mentioned in a text-book as bearing on it. Well, I read the head-note, which made the decision refer to quite a different point. On dipping into the report, however, I found that the head-note did not state as being decided the point which really was decided, but did mention as the decision that which was only a dictum not necessary for the decision: and I further found that the statements of fact by the Reporter and by the Judge were at variance. Now, those are matters in which supervision would be of use. We are told that unless the Editor has understanding of the special matter reported on, he cannot supervise a report. I think he can usefully do so if he is familiar with reports, and keeps before his eyes the points to be attended to in framing them. In the case in question, I had no special knowledge of the subject; but I could see that neither the head-note nor the statement of facts corresponded with the judgment. If I had been Editor, I should have sent the report back to have a proper head-note affixed, and to have the facts correctly ascertained and stated. How much of such supervision is desirable will be found out by experiment, and it will differ in different places and at different times.

"But I will not pursue the scheme into further detail. I have presented to the Council the main features of the case. I can see that there is dislike and suspicion of the Government plan in some quarters, but I cannot see that there are any valid grounds for it. And I trust that the Council will be of the same opinion."

The Hon'ble MR. DALYELL was prepared to admit that the hon'ble mover of the Bill had, in the observations which he had made, in a great measure met many of the objections which had been advanced against this Bill. But still, when we remembered the high quarters from which those objections emanated, and the very forcible manner in which they had been urged, he thought the Council were bound to exercise the very greatest caution before committing themselves to the measure, and to satisfy themselves that the advantages to be gained by passing this Bill would largely counterbalance the difficulties which, he could not help feeling, must inevitably occur if it became law in its present shape. His hon'ble friend was correct in telling us that most of the objections had been levelled rather at the Government plan of operations under the Bill, than at the provisions of the Bill itself. But he questioned whether his hon'ble friend was equally correct in the opinion which he apparently held that that plan could be carried out without this Bill. No doubt the Government could establish a system of law reporting under a central editor without any enactment on the subject, and it would possibly be within their competence to take under their immediate superintendence the present staff of reporters which was attached to the several High Courts; but the reports published under such a system would have no more authority than the present reports, and two out of the three objects of the Bill would fail to be secured. Under such a plan the reports might be improved in quality, but they would neither be diminished in quantity, nor would the area of their authority be extended. He very much questioned whether it would be worth while to carry out such an expensive plan for the purpose of securing so very partial and probably problematical a benefit. His hon'ble friend had reminded the Council that when the Bill was introduced their late colleague Sir George Campbell had spoken of it in no flattering terms. He had characterized it as a little Bill, but not an innocent Bill, and as one the importance and effect of which was in inverse ratio to its length. He and other members of the Council had also then expressed the opinion that some indication of the mode in which the Bill was intended to be carried out should be given in the Bill itself. The Bill gave power to the Executive Government to authorize the publication of certain reports, which would then be placed in a superior position to all other reports, inasmuch as the subordinate Courts

would not be obliged to permit the quotation of any reports other than these authorized reports. But nothing was said in the Bill as to the mode in which these reports would be authorized, or under what provisions or restrictions (or, as Sir George Campbell expressed it, "safe-guards") this power was to be exercised. It was evident that the effect of the Bill would depend entirely upon the mode in which these reports would be authorized, and MR. DALYELL still thought that the Bill was defective in leaving these matters to be determined in the rules which were to be drawn up by the Executive Government, instead of making distinct provision regarding them in the Bill itself. When we remembered this omission in the Bill, he thought the Council would agree with him that the objections which had been raised, although they did not apply to the Bill itself, but rather to the plan or rules under which the provisions of the Bill were to have effect, were deserving of careful consideration.

So far as he was concerned, however, he had some doubts whether even the Bill itself in its present form was altogether unobjectionable. He questioned whether the Government should take this power to which he had referred—whether, in fact, law reporting in this country should in any way be under the control of the Government? The days of personal Government had passed away, at any rate in the greater part of the country. The reign of law had commenced, and he for one was decidedly of opinion that anything which could possibly be interpreted as an interference with the decisions of the law Courts should be avoided. He submitted that, if this power of giving special authority to certain reports were taken, and was exercised, as it must be, by devolving the duty upon some official or set of officials in the ordinary employment of the Government, it would be quite possible, and not at all improbable, that the outside public might suppose that some sort of interference with the decisions of the Courts was to be attempted. The Council were aware that the subordinate Courts were bound by the decisions of the superior Courts. Now if the persons who reported these decisions of the superior Courts were under the control of the Executive Government and not under the orders of the Judges who pronounced the decisions, there was no safe-guard that some judgment which contained views adverse to those entertained by the Executive would not be omitted from the reports, and a control be thus exercised over the decisions of the subordinate Courts on the same subject. His hon'ble friend laughed at the idea of anything of the kind occurring, and MR. DALYELL did not suppose that it would occur; but still it would be possible, and some of the public might think that it did take place. At any rate, it might often happen that a decision would not be reported in such a manner as to give it that precise bearing which was intended by the officer pronouncing the judg-

ment. When his hon'ble friend asked permission to introduce the Bill, he gave some instances of the power of the law reporter in England. He told us that we had not, in the reports of Lord Ellenborough's decisions, what that learned Judge had decided, but what his reporter, who afterwards became Lord Campbell, had selected. If our reporters were altogether independent of the Judges, we might find ourselves in the same position in India. We might find in our law reports, not what the High Courts decided, but what the reporters, aided by the central editor, selected. His hon'ble friend would no doubt reply that it would be very easy to provide in the rules that the Judge pronouncing the decision should have some control over the report. But MR. DALYELL'S answer to that would be that the rules might at any time be altered without any legislative sanction being required.

As far as he could recollect, in the original scheme which had been proposed for the improvement of the law reports, it was intended that the Judges should take a much more active part than appeared in the plan which was now set forth; and in spite of what his hon'ble friend had said that day, MR. DALYELL still thought that the only way of getting over the whole difficulty would be to induce the High Courts to become responsible for their own law reports. He could not help thinking that they would do so if the Bill were framed somewhat differently; if instead of giving the Executive Government the power of determining what should be authorized reports, the Bill merely declared that the reports issued by the authorized Reporter of each High Court, and no others, should be binding on the Courts below. A Bill in this shape would have the double advantage of clearing up the doubt, whether at present a law report had any binding authority at all, a point which section 4 of the present Bill expressly left untouched, and of putting an end altogether to the unauthorized reports, which at present were a bugbear equally to the judicial officers who administered the law and to the professional gentlemen who practised in the Courts. Such a measure, too, would secure most completely many of the objects of the Bill. The multitude of law reports would be most effectually diminished. Their quality in all probability would be more likely to be improved by placing them under the direct supervision of the highest judicial authorities in each quarter of the empire, who were well acquainted with the law and customs of the place, than by leaving the supervision to any single official, no matter how conspicuous might be his ability. Their authority would be strengthened in all respects save as regards local limits; and although he had carefully considered the arguments which had been advanced, he still thought that the difficulties which would be involved in extending the area within which each set of reports was now sup-

posed to be binding were very great, and counterbalanced any advantages that might be gained by giving the lower Courts a larger range of authorities, or by bringing into prominence any differences of opinion between the superior Courts of different presidencies. He ventured to believe, too, that such a scheme would obtain the cordial co-operation of all the High Courts in carrying out its provisions; a co-operation which, as his hon'ble friend had told the Council that day, was essential to the successful working of any scheme of law reporting.

MR. DALYELL did not know that he need go further into the objections raised to the Bill and to the plan by which it was proposed to carry the Bill into effect, as those objections would be found fully detailed in the papers which had been printed in connection with the measure; but if he was not out of order, he would venture to ask His Excellency the President that the final discussion on the Bill might be deferred to the next meeting of Council, as he believed that further communications on the subject were likely to be received from the Governments of Bombay and the North-Western Provinces, and also as His Honour the Lieutenant-Governor of Bengal was not in his place that day to express in words the objections which he had taken to some of the provisions of the Bill in his Secretary's letter which had been circulated to the Council.

The Hon'ble MR. BAYLEY said that, after so full a statement as that made by the hon'ble mover of the Bill, he should ordinarily not have thought it necessary to add any remarks; but as he had personal experience of the evils of the present system of reporting both in a judicial capacity and as one of the original members of the Council of law reporting, he ventured to offer a few remarks upon the subject.

The crying evil of the existing system was that it ministered to the vicious practice of the members of the Mofussil Bar, who regarded law reports, not so much in the light of guides to show the real condition of the law, as stores from which they could cull precedents to support any view of the law which suited the position they were engaged to maintain—in short, their aim was, usually, not to assist, but to confuse, the Court.

The more numerous and imperfectly stated the decisions were, the better they suited the purpose of the lower class of Mofussil vakíls, and the result of the commercial system of reporting had no doubt favoured the growth of this evil. MR. BAYLEY had himself been often pressed with decisions which were apparently contradictory. Occasionally, by close examination of the reports, he had been able to find clues which shewed the real drift of the decisions quoted; sometimes, when cases happened to be among the records of his own

Court, he had been able to send for the original file and ascertain how far the facts and issues of law were really on all-fours with the case before him, but he had not unfrequently also been compelled to abandon all attempt to draw assistance from the precedents set before him and to decide without any reference to them. He thought that this was not a condition to which the Judges of our Courts, the least of whom held a most responsible position, should be exposed.

As regards the ability of the Courts themselves to issue and superintend the reports, MR. BAYLEY would point out that in fact this had always been within the competence of the Courts, who had indeed made occasional attempts to carry out such a system, but scarcely with success.

The reports of the old Sadr Courts were, he believed, prepared by the Judges themselves and were edited by the Registrar. Unquestionably many of the decisions were of very great value, and conveyed the matured opinions of gentlemen of great experience, some of them perhaps ranking among the ablest who ever came to India.

Nevertheless their reports could hardly be called on the whole successful; arguments of Counsel were rarely, if ever, given; the statements of fact were usually of a somewhat meagre description. A gentleman, whose friendship MR. BAYLEY had formerly the honour to enjoy, the late Mr. Morley, had endeavoured to make a Digest of these cases, but though he laboured at the work with much assiduity for many years, and although he was well known within and without the legal profession for his ability and his acquirements both as a scholar and as a lawyer, his Digest was certainly not received by any means as a satisfactory work. And this result was owing, MR. BAYLEY believed, not so much to any fault of the compiler of the Digest, as to the unsatisfactory character of the reports with which he had to deal.

It might, however, be said that these reports were the production of untrained men, and that it was not fair to accept them as examples of the existing style of law reporting.

But what was the case in the old Supreme Courts? The Judges of those Courts made no special effort to secure good reporting. He believed that almost from the earliest institution of the Supreme Courts the decisions of those Courts were left to the unassisted efforts of private reporters. Reports were no doubt published; some of them good, some of an inferior quality, and there were periods, MR. BAYLEY believed, for which no reports at all existed, and during which there could be no doubt many valuable decisions passed altogether unreported.

After the establishment of the High Court of Calcutta, a special Reporter was sanctioned for the appellate side of the High Court, who was salaried by Government; but it was not long before that arrangement broke down, and after various attempts to meet the desired object, the establishment of the Council of Law Reporting in Calcutta was encouraged, if it was not actually suggested, by the late learned and able Chief Justice, Sir B. Peacock. He did not wish in the least to disparage the Bengal Law Reports; on the contrary he believed that they had done a very useful work very well—quite as well, probably, as any law-reporting had been done in India before, and in a way most creditable to the gentlemen employed, and it was probable that the work of Government reports under the new law would be done much on the same lines and by the same Reporters. The Government reports would, however, have the further advantage of being subjected before publication to strict supervision and skilful professional criticism.

Still the Bengal Council for Law Reporting themselves admitted that the result was not what they aimed at. In a letter addressed to Government by that body they said: "The Bengal Law Reports have not yet attained the high standard of excellence which their originators hoped for;" and they attributed this in part to "the necessity of departing from the principle of selection," going on to explain that this necessity arose from the Council of Law Reporting being compelled to defer to the "commercial principle" to which the hon'ble mover of the Bill had more than once alluded, and which induced them to meet the vicious demand for numerous cases by reporting many which in themselves were such as should not have been reported. In fact the Council may almost be said in the same letter to have suggested the present measure, for they said "it is hardly a less important part of the duty of the Government to publish that part of the law which is enunciated by its tribunals, than to promulgate its legislation."

So far, therefore, as past experience was any guide, there was not much to be looked for from the persistent action of the Courts themselves, even if the Government could be assured of the continued willingness and leisure of the learned Judges to superintend the reports of their judgments.

No doubt objections had been raised and urged with much force, both by his hon'ble friend who last spoke and by the High Court of Bombay, as to the danger of putting so much power into the hands of Government, and it might be conceded that a corrupt Government, aided by corrupt reporters, might attempt to misreport or suppress a case; but the answer to that objection was, no doubt, that the attempt would so certainly be futile, and the attendant danger

and disgrace would be so great, that, practically, no such attempt ever would be made.

As regards the conflict of decisions, MR. BAYLEY would also wish to say a few words in further illustration of the argument used by his hon'ble friend the mover of the Bill. The effect of the provisions in the Bill would not be to aggravate such conflicts, but to accelerate their termination. It might be in the remembrance of some of those who heard him that for a long time a series of opposing decisions on the effect of the law of limitation had been passed by the Courts of Calcutta and of the North-Western Provinces. The legislature did not intervene, for it was not clear that any intervention was necessary. It was only after many years that the point arose in a case of sufficient importance to bring it before the cognizance of the Privy Council, who then upheld the view of the Calcutta Court as being in accordance with the wording of the law. The effect of that decision, authoritatively pronounced, was no doubt to settle the real state of the law, and the Government then stepped in and amended the law in the sense of the North-Western Provinces decision, as being most in accord with public convenience.

Again, not long ago, a question arose as to the construction of a law of a general application, by which certain officers of Government were guided in the performance of their duty. Some of these officers applied accordingly through their Local Government for instructions. On reference to the Government Law Officers it was found that the point raised had twice come before the High Court of Calcutta; had twice been fully argued, and in both cases the decision was the same, a decision moreover known to be in entire accordance with the intention with which the law was framed. The Government of India accordingly referred the officers to the decisions in question. But it then was found out that, in another High Court a single Judge, on a reference from a lower Court, and without any argument before him, had expressed a contrary opinion, which had been reported as a precedent, and which, therefore, Courts in his province were, as the law now stood, bound to respect; and thus, in a matter in which uniformity of action was not only desirable but important, no such uniformity was possible, until one Court or other on its own motion reviewed its existing decisions, for which no opportunity might arise for years.

But under the provisions of the present Bill, the Judge of any subordinate Court having the opportunity of following whatever precedent commended itself to his judgment, the conflict was sure at once to be brought under the attention of the Superior Courts, and to be fully argued. It was to be hoped that in the majority of these cases the law would settle itself; but if it should in any

instance prove otherwise, the remedy of appeal to the Privy Council or of legislative interference would still be as available as before, only the necessity of one remedy or the other would be more promptly shown. MR. BAYLEY, in conclusion, requested the Council to excuse the length to which his expression of opinion had extended.

The Hon'ble MR. HOBHOUSE had a few observations to make in answer to the remarks which had fallen from his hon'ble friend Mr. Dalyell. One point he mentioned was, that he considered the outside public would be suspicious of the correctness of the reports if they were conducted by the Government. We were told, too, elsewhere, that the Government must be like Cæsar's wife, above suspicion. But probably when Cæser was speaking of his wife, he was thinking of the opinion of reasonable men who formed their judgment on reasonable grounds. Even Cæsar must have known that the tittle-tattle of the Roman boudoirs was beyond control. So MR. HOBHOUSE supposed that, by the outside public, his hon'ble friend meant those who paid attention to the subject and took an interest in Law Reports. To that, all that need be said was, that if an outside public of that kind were dissatisfied with the Law Reports, the remedy was in their own hands. All they would have to do was to get some painstaking person like Mr. Sutherland to publish the judgments of the High Courts.

The object of the Government in supervising reports would be completely frustrated if intelligent persons suspected the thoroughness of the product. As for any other outside public, MR. HOBHOUSE suspected that they would never know or care anything about the matter.

Then his hon'ble friend said there was no safeguard provided by the Bill. MR. HOBHOUSE had not heard what safeguard his hon'ble friend would propose. MR. HOBHOUSE could not think of any mechanical safeguard nor had any been suggested. The true safeguard was to get men of intelligence and honour to undertake the work, whose interest would be to frame good reports.

Then his hon'ble friend made some observations as to the power of the Law Reporter. But that power existed now, as MR. HOBHOUSE had been at pains to show, and it was one of the things which rendered it desirable to have Law Reporters under public and responsible supervision. Such supervision as was exercised by Lord Campbell over the decisions of Lord Ellenborough was doubtless very beneficial to the public. In that case a strong lawyer with a reputation of his own at stake made selections from judgments of which some were useful and some otherwise. In other hands the process might not be so useful. But the power of selection must be

somewhere, and the object was to have it in a quarter where there was every motive to exercise it well. If it were not exercised well, he again said that the whole plan must fail, and the lawyers would continue to be burdened with a number of reports that were useless to them.

The hon'ble Mr. Dalyell had said, again, that our object should be to induce the High Courts to become responsible for the reports of their decisions. MR. HOBHOUSE did not know how we could induce them to do so. If they were ready to do it, he admitted that that would most completely meet the object in view. His hon'ble colleague, Mr. Bayley, had just shown by referring to instances how difficult it was for the High Courts to perform that duty with sufficient promptitude and persistency, and MR. HOBHOUSE had nothing more to add to what had already been said.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed. He would give two reasons against the proposal to postpone the passing of this Bill. It was true that His Honour the Lieutenant-Governor was not present in his place, but that was not of itself an objection to the passing of the Bill. The letter sent to the Committee on behalf of Sir Richard Temple dwelt a great deal on the mischiefs of the present system, and mentioned the objections to the plan of the Government in a very brief and cursory manner. There was nothing in the letter which led MR. HOBHOUSE to believe that the Lieutenant-Governor wished to oppose the passing of the Bill. He had not read the letter to the Council because it touched only very lightly on objections which he had to-day stated fully as they were put forward by others. It was true that an alternative suggestion was made, but that, as MR. HOBHOUSE understood it, amounted to something like a reconstitution of the business of the High Courts; a very large and difficult arrangement, which would take long to effect, and was beyond the scope of the Council's business. Moreover, if Sir Richard Temple had wished to take part in this debate, he would have said so for himself. With regard to the Civil Appeals Bill he had expressed such a wish, and MR. HOBHOUSE had immediately acceded to it, and made arrangements not to bring on that measure until a time when Sir Richard Temple could conveniently be present. Otherwise he should have brought the Civil Appeals Bill before Council at an earlier date. But with regard to the present Bill Sir Richard Temple had been silent, and MR. HOBHOUSE declined to accept from his hon'ble friend Mr. Dalyell a suggestion about Sir Richard Temple which he had not made for himself.

The other consideration on which MR. HOBHOUSE objected to a postponement was personal to himself. These matters could not be taken up without a good deal of labour. He was responsible for the conduct of the business, and he was always liable to have questions asked him upon any point of difficulty that occurred. In order to be able to answer any question or objection with the requisite promptitude and accuracy, it was necessary that he should prepare himself, and the consequence was that, in every case in which he thought it possible that questions could arise, he always made it a rule to read through all the papers the day before the Council met. The result was this. It was the practice, when no amendment was made, to pass a Bill at the same sitting at which the Report was taken into consideration, there being opportunity then for full discussion. The practice was a very convenient one. To justify a departure from it, a good reason should be given, and MR. HOBHOUSE thought that none such had been given. He should, therefore, ask that the motion might be put.

The Hon'ble MR. DALYELL said that his hon'ble friend Mr. Hobhouse had omitted to mention two other grounds which had been advanced in favour of the postponement of this motion, namely, that communications were expected from Bombay and the North-Western Provinces. They had as yet had no representation of any kind from the North-Western Provinces. He believed that some of the Judges of the High Court of the North-Western Provinces were very strongly opposed to the Bill.

The Hon'ble MR. BAYLEY explained that the rules to be framed under this Bill, which were circulated to hon'ble members, had been confidentially circulated some time since to the Judges of the High Courts : objections might be received regarding those rules, but he did not think that, after such a length of time, they might expect to receive further objections to the Bill itself.

His Excellency THE PRESIDENT said :—"I am sure the general feeling of the Council always is, that if any member wishes any particular measure to be postponed for a short time, in order to give further opportunity for discussing its details, such postponement should be acceded to. At the same time we must all feel that the manner in which business has to be transacted by my hon'ble friend, Mr. Hobhouse, deserves every possible consideration. Of course it would be a very great convenience to him that this Bill should be disposed of in order that his whole mind may be applied to the other Bill to which he has referred as standing for consideration at our next meeting. I should, therefore, be inclined to suggest to my hon'ble friend, Mr. Dalyell, that if he

does not desire to propose any substantial amendment to the Bill, it would be more convenient that it should be passed to-day."

The Hon'ble MR. DALYELL said that, if the objections to delay were put upon the personal grounds to which His Excellency the President had adverted, he was willing to withdraw his proposal for the postponement of the motion before the Council.

The Motion was put and agreed to.

MERCHANT SHIPPING ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill for the further amendment of Act I of 1859 (for the amendment of the law relating to Merchant Seamen), and for other purposes.

SIR JAMSETJEE JEEJEEBHOY'S LOAN BILL.

The Hon'ble MR. ELLIS asked leave to postpone the motion for leave to introduce a Bill to secure the repayment of a loan by the Government of India to Sir Jamsetjee Jeejeebhoy, Baronet.

Leave was granted.

The Council adjourned to Tuesday, the 2nd February 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 19th January 1875.

Office Supdt. Govt. Printing.—No. 690 L. D.—2-2-75.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 2nd February 1875.

PRESENT :

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding*.
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble John Inglis, C. S. I.
The Hon'ble R. A. Dalyell.
The Hon'ble H. H. Sutherland.
The Hon'ble J. R. Bullen Smith.
The Hon'ble Sir Douglas Forsyth, K. C. S. I.
The Hon'ble Ashley Eden, C. S. I.

NEW MEMBER.

The Hon'ble Mr. Eden took his seat as an Additional Member.

MERCHANT SHIPPING ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill for the further amendment of Act I of 1859 (*for the amendment of the law relating to Merchant Seamen*) and for other purposes, be taken into consideration.

When he had introduced the Bill he stated that it had three objects. It was then entirely confined to the one subject of tribunals for enquiry into marine casualties, and into the misconduct of masters and officers of ships; and the objects of the Bill were, first, to improve these tribunals in their composition; secondly, to arm them with larger powers for obtaining evidence; and thirdly, to explain some ambiguous passages in Act XV of 1863 which related to the same subject of enquiry as to shipwreck or other casualties at sea. The Bill was still mainly occupied with the same

three objects, but had assumed a somewhat different shape, and also embraced one or two other matters owing to the circumstance that it was found desirable wholly to repeal Act XV of 1863, and that it therefore became necessary to re-enact one or two sections of that Act which related to different matters.

The Council were aware that Act I of 1859 was the Act which contained the body of the Indian Merchant Shipping Law, and that there had been pending for some time a Bill for the consolidation and amendment of the whole of that law. He thought that Bill was some eight or ten years old, but it had not come before the Council for a long time for this reason, that the Indian law of merchant shipping was so interlaced with the English law, that it was desirable to have them as much in accord with one another as was possible, even with regard to the very expressions used. And it so happened that about the time we proposed to consolidate our law, the authorities in England proposed to consolidate the English law on the subject: a great Bill was prepared for the consideration of Parliament, and the Secretary of State for India thought it wiser that we should postpone the consideration of our Bill until Parliament had passed a consolidated measure. That Bill had been before Parliament for six or seven years, and so the Bill pending in this Council had been put off for some time. The consequence was that we had had no large amendment of the merchant shipping law, but from time to time small amendments had, as occasion required, been made.

Now this interlacing of the English and the Indian law was sometimes rather embarrassing. He would mention a case which occurred a short time ago, which showed the expediency of endeavouring to make the law on the subject clear. He spoke from memory, but the case to which he was about to refer was well known to the Hon'ble Mr. Eden, who would be able to correct him if he stated it incorrectly. There was a certain person named Horatio Walters, who was the master of a British ship which put into Rangoon. When at Rangoon, a charge was brought against him of cruelty to the crew. The charge was enquired into and some evidence was taken; and when the evidence had proceeded a little way, a compromise was effected, as was often done in cases of personal injury, and the matter was settled out of Court. Shortly afterwards some fresh information came before the Magistrate, which convinced him that the case had a much wider range and was very much worse in its bearings than he had at first been led to suppose, and he thought that proceedings ought to be taken to punish the Captain and deprive him of his certificate. Accordingly the Magistrate took such proceedings as he thought the law prescribed, but here he got entangled in the meshes of the law, and the proceedings that were taken proved ineffectual. The result was that the Captain took the

ship back to England with a lascar crew, and was guilty of horrible and shocking brutalities on the voyage, for which he was tried in London and sentenced to penal servitude for life. MR. HOBHOUSE threw not the slightest blame on the person before whom the Captain was brought up in Rangoon: the failure of justice clearly arose from the complications existing between the English and Indian Acts. So far from blaming anybody who tripped in this matter, he sympathized with him, for he had been very much puzzled himself. He probably would not have understood the law even now if he had not had before him a very valuable paper sent up by the Madras Government, containing criticisms on the earlier form of our draft, and a paper written by Mr. Norton, the then Advocate General of Madras, in which he worked out with the greatest clearness and ability the state of the law as it existed in the year 1865, when it was in the same state as now. If, therefore, we had been so lucky as to avoid flaws and to make our Bill exactly square with the English Acts, it was very much owing to the assistance received by the Council from the Madras Government.

The law relating to these enquiries into accidents and misconduct had its origin in the English Merchant Shipping Act of 1854. That Act gave power to the Board of Trade to cancel the certificates issued by it on adverse reports made by various Courts and tribunals, and amongst others, by any Court or tribunal established by a legislature such as ours, for the purpose of enquiring, either into marine casualties, or into cases of misconduct.

The Indian Act I of 1859 followed the English Act of 1854. By that Act the Local Governments were empowered to embody a special Court or tribunal for the purpose of enquiring into marine casualties. They had nothing to do with questions of misconduct, but only with cases of damage and loss arising at sea; and their function was to report to the Local Government. They had no power of their own to cancel a certificate granted by the Board of Trade. This legislature could not give them that power: so it was left to the Board of Trade to exercise their power of cancellation on the footing of the report submitted to them by the Local Government.

In 1862 an important amendment was made in the English law. By the Act which was passed in that year, the power of cancelling a certificate was taken away from the Board of Trade, and given to the local Court which had the function cast upon it of making enquiries. And at the same time some particular methods of procedure were prescribed for the local Courts, such as these: they were to state their decision in open Court, and were never to cancel the certificate unless a copy of the statement or case on which the investigation was founded had been furnished to the holder of the certificate

before the commencement of the investigation. That latter provision was extremely embarrassing, and it was that provision which was the cause of the failure of the proceedings at Rangoon. Of course it was obvious that in many cases an investigation might commence without knowledge of any misconduct. All you knew in the first instance might be that some disaster had happened. It was impossible to tell at the outset of an enquiry to what extent it might go or whom it might affect.

After the English Act of 1862 was passed, we passed our Act XV of 1863. By that Act power was given to all Courts of Admiralty, and, where there was no Court of Admiralty, to the principal Court of criminal jurisdiction on the spot, to enquire both into marine casualties and into charges of misconduct in merchant-vessels; and they were also empowered to cancel certificates given by the Board of Trade if their report was confirmed by the Local Government. Again by the same Act the Local Government might direct any Board or officer to enquire into cases of misconduct not arising out of any casualty, and to report thereon to the executive, and then the Local Government might cancel any certificate given by it. Where the Board of Trade had given a certificate, the enquiry was to be made, either by a special tribunal appointed under Act I of 1859, who had only power, as far as that Act went, to report, or by an Admiralty Court or a Court of criminal jurisdiction, which was empowered by Act XV of 1863 both to enquire into the case and to cancel the certificate. If the certificate was an Indian certificate, then the Local Government might appoint a tribunal constituted under Act I of 1859 in case of some disaster having happened, or any Board or officer in case only of a charge of misconduct, and, on a report being made by either of such tribunals that there had been misconduct, might cancel the certificate.

Now this law was rather intricate, and when the Council set about making an alteration in the constitution of the special tribunal, which was desired by two or three of the maritime Local Governments—he thought by all—it was desirable to attempt a simplification of the processes, and some elucidation of the parts where people were likely to go astray. The principal alterations proposed would be found in chapter II of our Bill. Sections 3 and 4 of that part of the Bill dealt with the special tribunals of enquiry. Under Act I of 1859 it was provided that that tribunal was to consist of only two persons, of whom one was to be a Magistrate and the other a person conversant with maritime affairs. That tribunal, however, did not in all cases carry sufficient weight. Besides a person conversant with maritime affairs, a person conversant with mercantile affairs was sometimes wanted. It was desired to have the number larger and the elements of the Court more varied. Now it was proposed that

the tribunal should be constituted of numbers varying from two to four. One was to be a Magistrate, one was to be a person conversant with maritime affairs, and the other two were to be persons conversant with either maritime or mercantile affairs. Then, section 9 extended to that special tribunal the power of enquiry into cases of misconduct as well as into cases of disaster. So that if either they or the Local Government thought that there was misconduct, they might then extend their enquiry to that. Then, section 5 re-enacted the provisions of Act XV of 1863, which gave power to the Courts of Admiralty jurisdiction and Courts of ordinary criminal jurisdiction to investigate charges of incompetency or misconduct or disaster. Then sections 6, 7 and 9, dealt with that part of the English Act of 1862 which required a statement of the charge to be made to the holder of the certificate. This Council could not repeal or affect the English Act passed in 1862; therefore, what we had to try to do was to make our Act fit into the English Act, and give directions as clear as we could devise under the circumstances. What the Bill provided was that if, in the commencement of the case, the Local Government had reason to think that a charge of incompetency or misconduct should be made, it should state the grounds of that charge, and a copy of these grounds would be given to the person charged. If it appeared in the course of the investigation that such a charge ought to be made, the Court would prepare a statement of the grounds of such charge, and proceed with the enquiry as if it were a new investigation. By that means we hoped to avoid the difficulties which might arise in any case, and which had actually arisen in the case which had occurred at Rangoon; the difficulty that occurred when it appeared for the first time in the course of an investigation that an enquiry into the misconduct of the master or officers ought to be made. Then sections 10 to 16 of the Bill dealt with other questions of procedure, and conferred extended powers for the taking of evidence. And section 17 provided that all the provisions of this part should be applicable, not only to proceedings where the certificate was held from the Board of Trade, but also where the certificate was held from the Local Government.

Chapter III dealt entirely with the question of Indian certificates, and was principally a re-enactment of Act XV of 1863. The main difference was this—that whereas now the Local Government might set in action either the special tribunal MR. HOBHOUSE had described under Act I of 1859, or a Court of Admiralty, or a Court of criminal jurisdiction, or any Board or officer, we proposed to leave out the investigation by the Board or officer. The extended range of enquiry given to the special tribunal and their extended power to cancel certificates would answer all purposes. He believed that in point of

fact the Board or officer was not resorted to for the purposes of these investigations, but that the Local Government conducted the enquiry through either the machinery of a Court of Admiralty or a Court of criminal jurisdiction or by the special tribunal under Act I of 1859.

There were some other amendments made by the Bill which it was not necessary to state at length to the Council. Part IV introduced a new subject into the Bill, but it was one that was introduced merely because Act XV of 1863 was repealed, and therefore it was necessary to re-enact what we wished to retain. It related to agreements with seamen and was only a re-enactment with some small amendments. Such was also the case with Part V.

His Honour THE LIEUTENANT-GOVERNOR said there was just one question he would wish to ask the hon'ble and learned member with reference to sections eight and nine of the Bill. Suppose a master or other marine officer was summoned before a Court, either as a defendant or as a witness, and the Court saw *primâ facie* reason for considering him blameworthy, could the Court impound his certificate?

The HON'BLE MR. HOBHOUSE did not think there was any special power to impound a certificate. There was a provision that the certificate could be suspended or cancelled.

His Honour THE LIEUTENANT-GOVERNOR said if that was so, he would venture to observe that it was very important that the Court should have the power of impounding a certificate. A case had occurred recently in Calcutta which shewed the necessity of the Court having such power. It sometimes happened that a man appeared before the Court, and on the next day appointed for his attendance he was not present, but had disappeared and taken his certificate with him. He might proceed to distant ports in other countries and practise his profession under cover of the certificate notwithstanding that enquiry in India might shew him unfit to hold that certificate in regard to the safety of life and property entrusted to his care. That might prove a serious difficulty. Should not the Court have the power of compelling a man to produce his certificate and of detaining it pending the enquiry? In a case sent up to HIS HONOUR, difficulty threatened to arise from want of this power, but fortunately the Magistrate did ask the man for his certificate and had managed to retain it.

The HON'BLE MR. BAYLEY thought section 8 met the difficulty referred to by His Honour the Lieutenant-Governor. It gave the Court power to enforce the attendance of any person during the enquiry. It gave, in fact, to the

magistrate the same power as to compelling the attendance of accused persons and witnesses and for the regulation of the proceedings as he had in any other case that came before him: while the magistrate possessed this power, the power to impound a certificate seemed little needed.

His Honour THE LIEUTENANT-GOVERNOR did not think that that section gave the magistrate power to impound the certificate. He believed there was a paper on the subject sent up by the Bengal Government, with a memorandum which was given by one of the Magistrates of Calcutta.

The Hon'ble MR. HOBHOUSE would suggest that the Council should go on to take the Report of the Select Committee into consideration, but that they should not pass the Bill on that day. He did not think any such paper as that referred to by the Lieutenant-Governor had been received by the Committee; but in the meantime His Honour might consider the question and prepare an amendment upon it. The matter might prove to be of importance, and was at all events worth considering.

His Excellency THE PRESIDENT observed that it seemed to him very desirable that the point should be considered, and that the Lieutenant-Governor should have an opportunity of having such a letter addressed to the Legislative Department: it appeared at the present moment that such a letter had not been received.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE asked leave to postpone the motion that the Bill as amended be passed.

Leave was granted.

PROBATES AND LETTERS OF ADMINISTRATION BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to amend the law relating to Probates and Letters of Administration.

CIVIL APPEALS BILL

The Hon'ble MR. HOBHOUSE also presented a further Report of the Select Committee on the Bill to amend the law relating to Civil Appeals in the Lower Provinces of the Presidency of Fort William.

PORT-DUES BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the final Report of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-dues.

Leave was granted.

NATIVE SOLDIERS' RIGHTS AND LIABILITIES BILL.

Major-General the Hon'ble SIR H. W. NORMAN presented the Report of the Select Committee on the Bill to remove doubts as to the rights and liabilities of certain Native Soldiers.

SIR JAMSETJEE JEEJEEBHOY'S LOAN BILL.

The Hon'ble MR. ELLIS moved for leave to introduce a Bill to secure the re-payment of a loan by the Government of India to Sir Jamsetjee Jeejeebhoy, Baronet. The history of the case was this. In 1858, in recognition of the worth, liberality and loyalty of Sir Jamsetjee Jeejeebhoy, Her Majesty was pleased to confer upon him a Baronetcy, the first hereditary title ever bestowed upon a native of India. Sir Jamsetjee was then very wealthy, but saw the possibility of a reverse of fortune, and to provide against it, and anxious to secure a suitable maintenance for the future Baronets, he desired to settle a sufficient sum on the Baronetcy, a wish which was readily responded to by the Government. He accordingly entered into an engagement, but died before legal effect could be given to his wishes. Subsequently, Act XX of 1860 was passed to carry out the arrangement. The purport of this Act was to create a trust, and to vest in the trustees a certain property known as Mazagon Castle, and also an amount of Government promissory notes calculated to produce an interest of £10,000 a year. This sum was vested in the trustees, and was made inalienable by the possessors of the property and title. The wisdom and foresight of these arrangements too soon became apparent. In 1863-64 Sir Jamsetjee Jeejeebhoy's family became mixed up in those speculative transactions which ruined so many of the leading families of Bombay. The share of the present Baronet in these transactions was comparatively small, but he was called upon to meet heavy demands on account of other members of the family, and this led to pecuniary embarrassments. He had cleared off much of the debt then incurred, but there remained some four-and-a-half lákhs which he was unable to meet. Anxious to bear the burden himself and free his successors from the liability, he applied to the Government for a loan, offering to give up a large portion of his income for a certain term of years to pay off that loan if advanced by the Government. This application was strongly supported by the Government of Bombay, and similar considerations to those which induced the original grant to the Baronetcy induced the Government to agree to afford this relief to a much respected and highly influential family. But there was one condition which it was essential to observe, and that was, that in granting the relief applied for, there should be no risk whatever of any loss to the public. The loan could, of course, be granted by the Executive Government without any application to this Council, but it was in order to secure the public

against loss that legislation became necessary. As MR. ELLIS stated above, the property was inalienable under Act XX of 1860, and in order to furnish adequate security for the repayment of the sum which the Government were asked to advance, it became necessary to resort to legislation in order to make alienable the funds which had been vested in the trustees. The sum required was a loan of four-and-a-half lákhs of rupees. To provide this it was proposed to set aside 40,000 rupees annually for a period of seventeen years, which would pay off the whole of the principal with interest at five per cent. There would thus be no loss to the public, and ample security would be afforded by the Bill which he was now asking leave to introduce, inasmuch as the Bill would give the Government legal power to deduct annually from the sum vested in the trustees the 40,000 rupees required to pay off the interest and principal.

There was another matter which had to be attended to. Sir Jamsetjee Jeejeebhoy might have been willing to consent to this alienation for his own life, but in case of his death, there would have been legal difficulty if his heirs had not previously consented. To secure this the Government had obtained the assent of the three next heirs, two of whom had signified their assent by their own hands, they being of legal age, and the third, a minor, was represented by a guardian appointed formally by the High Court. There was thus no difficulty likely to occur in the realization of the loan which Government had decided to give.

The Motion was put and agreed to.

MADRAS SALT LAW AMENDMENT BILL.

The Hon'ble MR. ELLIS also moved for leave to introduce a Bill to amend the law relating to Salt in the Presidency of Fort Saint George. In doing so, he would explain briefly the circumstances which had given rise to the proposed legislation. In all India, excepting Madras, the salt-revenue was raised by an excise or customs-duty. In Madras, however, in lieu of the excise, there was a different system. The Government had a monopoly, and sold the salt at a price fixed by law. This price was at present two rupees per maund, and the theory upon which this particular price had been based was that Re. 1-13-0 would represent the duty which in Madras, as in Bombay, was leviable on each maund of salt, and the balance, three annas, would represent the charges incurred by the Government in producing that salt and bringing it for sale. This theory corresponded with the actual practice in the Eastern Districts, for there the salt could be manufactured and brought for sale at a cost which averaged three annas per maund. The duty levied, therefore, in the Eastern Districts was, as it ought to be, Re. 1-13-0 out of Rs. 2, the selling price. On the

Western Coast, however, the case was different. On that coast of the Madras Presidency but a small portion of the salt could be produced by manufacture on the spot, and that salt was of a very inferior quality; consequently the Madras Government resorted to a system of importation by means of contractors, and the salt was brought from Goa, Bombay, and other places in order to be sold by Government to the people. In carrying out these transactions the cost to the Government, independently of the duty, was not three annas as on the Eastern Coast, but a sum estimated at from seven annas ten pies to seven annas eleven pies per maund. The result, therefore, was that when salt was sold at two rupees per maund, the full duty of Re. 1-13-0 was not realized, and so Government lost on each maund of salt the sum of four annas and ten or eleven pies as the case might be. Thus the people in those districts not only shared in the lighter salt-taxation which was sanctioned by law for western and southern India, but enjoyed an exceptionally light rate of duty as compared with their brethren in the same Presidency. For this favourable rate there was no ground whatever on the score of the people being unable to pay, for the fact was that they were exceedingly well off, and very much better off than the people in most other parts of India. It was hardly fair, therefore, to the rest of the community, that these people should enjoy an exceptionally light taxation in the matter of the salt-duties. Another reason why a change in the present system was expedient was, that so long as it continued, all private trade, all private enterprise, was absolutely impossible. The question with which we had now to deal had been mixed up with a discussion on the merits of the system of monopoly as compared with the system of excise in Malabar and South Canara, but on this discussion it was not necessary for him to enter, because the present measure would in no way affect it. It was true that so long as the present law existed it was not possible to have a system of excise, but the carrying out of the change that was now proposed would in no way commit the Government to adopt the system of excise. The present law prevented any importation by private parties from Bombay, Cheshire, or other parts, and restricted the sale of salt to the Government monopoly. Thus while under the present system private trade was impossible, under the other system of a fixed excise-duty, which this Bill would empower the Government to carry out, it would be open to the Government either to adopt the system of excise or to maintain the present system of monopoly, just as might seem best.

He had only one other point to mention at this stage of the proceedings. The proposed change had been for a long time contemplated, and it was for some years strongly advocated by the Madras authorities. The Government of Madras indeed applied for the change, and in June 1873, a draft

Bill was forwarded to them for their concurrence. In the reply of the Madras Government, however, it was stated that the Government had changed their opinion, and that a majority at least of that Government had decided that it was inexpedient to make any change in the present state of things. Still, for the reasons which had been previously given by the Madras Government and in which the Government of India had concurred, and which might briefly be stated as being three in number,—*first*, that the salt-revenue would be increased; *secondly*, that taxation would be equalized, and *thirdly*, that the door would be opened to private enterprise—for these reasons, the Government of India resolved that it was expedient to go on with the Bill, and he proposed accordingly with the permission of the Council to bring it in. It was only an enabling Bill, and would not make it imperative on the Government to substitute a fixed duty for the selling price now prevailing, but would enable the Government to carry out that measure if it saw fit.

The Motion was put and agreed to.

REPEALING ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill to correct a clerical error in the Repealing Act, 1874. The error which this Bill was intended to correct was of the simplest description. It had occurred to an Act which was for the purpose of settling matters of jurisdiction in Kulu, and it consisted in having written the word "two" for the word "one." A glance at the schedule of the Act would show exactly how the error happened. In several Acts the repealing clause and the schedule referred to in it had been struck out. That clause happened to be clause two in both the next-door neighbours to this unlucky Kulu Act; so either in the copying or in setting up the type the word "two" got written for "one". However, there the error was, and the effect of it was that, instead of repealing the non-effective part of Act V of 1874, we repealed the effective part; and we proposed now to substitute "one" for "two".

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also applied to His Excellency the President to suspend the Rules for the Conduct of Business.

His Excellency THE PRESIDENT observed that the President under the Rules for the Conduct of Business had the power for sufficient reason of suspending the Rules. It appeared to him that the reasons given by the Hon'ble Mr. Hobhouse were sufficient and that no inconvenience could result from the suspension of the Rules on the present occasion.

He therefore suspended the Rules.

The Hon'ble MR. HOBHOUSE then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be passed.

The Motion was put and agreed to.

BURMA COURTS ACT AMENDMENT AND BURMA FISHERIES BILLS.

The Hon'ble MR. HOBHOUSE also moved that the Hon' ble Mr. Eden be added to the Select Committees on the following Bills:—

For the further amendment of the Burma Courts Act, 1872.

To regulate Fisheries in British Burma.

The Council adjourned to Tuesday, the 9th February 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 2nd February 1875.

Office of Supdt. Govt. Printing.—No. 696 L. D.—8-2-75—230

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 9th February 1875.

PRESENT :

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble B. H. Ellis.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble John Inglis, C. S. I.

The Hon'ble R. A. Dalyell.

The Hon'ble H. H. Sutherland.

His Highness the Mahárájá of Vizianagram, K. C. S. I.

The Hon'ble J. R. Bullen Smith.

The Hon'ble Sir Douglas Forsyth, K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

MERCHANT SHIPPING ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved that the Bill for the further amendment of Act I of 1859 (*for the amendment of the law relating to Merchant Seamen*) and for other purposes, as amended, be passed. This motion was before the Council on the last occasion when it met, and was postponed on account of a suggestion which fell from His Honour the Lieutenant-Governor that it would be desirable to amend one of the sections of the Bill, and also because a further paper of importance was to be expected from the Government of Bengal. No notice of amendment had been given by his hon'ble friend, but a paper which he held in his hand had been sent in by that Government. In point of form, he supposed that the matter was no longer in the hands of the Select Committee, because their final report was taken into consideration by the Council, and their fleeting existence was thereby terminated. But the gentlemen composing the Committee had been good enough to meet yesterday for the purpose of considering the paper sent in by the Government of Bengal, and the result

of their consideration was that, with one exceedingly trifling exception, the Committee thought on the whole it was not desirable to make any alteration in the Bill. MR. HOBHOUSE therefore hoped the matter might be disposed of in the course of that day.

MR. HOBHOUSE trusted his hon'ble friend would not consider that he was hard upon him when he entered a mild protest against the practice of sending in a number of miscellaneous suggestions for the alteration of a Bill after it had been very frequently before the Select Committee and many months before the public, and was in what ought to be its final stage. All the world knew that his hon'ble friend had been personally engaged in a public business of as much magnitude and importance as had ever been undertaken by an Indian Government, and all the world knew how that work had been performed, and might guess without his saying so that that work, coupled with the other weighty work of the Government of Bengal, had prevented the Lieutenant-Governor giving personal attention to a minute corner of legislative territory, such as this was. But it had recently happened several times that, just when the Council were prepared to pass a Bill, sometimes after the Bill was put into the paper to be passed, fresh papers containing a number of miscellaneous suggestions had come in, as to which there was no apparent reason why they should not have come in long before. That was a matter of considerable inconvenience; he need not enlarge on the reasons why it was inconvenient. Every man of business knew the reasons why a business had better be finished when it had been prepared to be finished, even when it was all in one hand. These reasons were strengthened when the business was conducted by a number of other persons, and still more so when it was conducted by a fluctuating body such as a Select Committee or as this Council. Sometimes of course the thing could not be helped, and we must make the best of it; at other times the new matter was of such importance that it ought to be dealt with even if the Bill was on the very verge of passing into an Act. All MR. HOBHOUSE wished to say was that there was an inconvenience about it, and that as a general rule, and only as a general rule subject to exceptions, it was better to pass our Bills when they reached the final stage in which the Committee had put them, than to re-consider them again with a view to small alterations, and not to alter them unless the changes proposed were matters of considerable importance. When there was a matter of importance in question, it was always competent to any member to have the proposal put into the form of an amendment, and to move it, either upon the consideration of the Report of the Select Committee, or when the Bill was to be passed. Indeed on consideration of the Report he might raise a discussion upon it without moving an amendment.

That brought the point to a definite issue; but when such proposed alterations related to a considerable number of small points, a re-consideration at that stage was likely to result in the introduction of some incongruous matter and not to improve the Bill.

Now, with regard to the matter before the Council, this Bill was introduced in July 1873; it was altered by the Select Committee in July 1874, and was sent to the Local Governments on the 13th July 1874; and the letter from the Government of Bengal came in some three days ago. Besides the point mentioned by the Lieutenant-Governor, the letter contained some suggestions for objects which were contained in a former letter of theirs and which were considered but not adopted by the Select Committee, and it contained some suggestions for objects which, on examining the Bill, were found to be already provided for by the Bill, with the exception of one administrative matter which he thought was essentially provided for in the present law.

The letter ushered in an appendix which consisted of sixteen folios of print, and he found, after a careful perusal, that fully fourteen of these pages had nothing whatever to do with the Bill. They referred to proposals for the general amendment and consolidation of the Merchant Shipping Law, which would have been most fittingly sent in if we had undertaken consolidation. But, as he had already explained to the Council, the general consolidation and amendment of this law were not under the consideration of the Council; they had been expressly removed from our consideration, and we were dealing only with the limited subject of courts of enquiry.

The point which was specially mentioned at the last meeting of Council was not the subject of an amendment; but it would be convenient to state what that point was. It was contained in a letter or memorandum of Mr. Marsden sent in to the Bengal Government. Mr. Marsden was speaking of Act I of 1859 and Act XV of 1863: and he said:—

"Neither of the Acts above cited gives any power to the Local Government to detain any person pending the result of an inquiry held under section C, Act I of 1859, or pending the decision of the Local Government on the report furnished by the officers appointed to hold such inquiry; neither is any power given to the officers holding such inquiry to impound the certificates of persons giving evidence before them till the orders of the Local Government be made known. The result of this is obvious; it enables any witness against whom the evidence in the case may be taking an unfavourable turn, to simply leave India and go outside the local jurisdiction, taking his certificate with him. It will be seen that this might occasion serious failure of justice, as a master whose negligence had caused the total loss of a vessel may simply obtain a certificate of clearance for his vessel on the production of his certificate before the Shipping Master, and leave this port; but in the event of his not being able to

produce such certificate, he is precluded from obtaining such clearance. What I would suggest is, that power should be given to the President of Courts of enquiry held under section C of Act I of 1859, to demand the certificate of any certificated witness produced before him, and to impound such certificate until the orders of the Local Government be known in the case, or until such time as it may seem expedient to the President to return the same to its owner. This would in no way preclude the vessels being sent away in charge of a competent master, but would, I think, effectually preclude guilty persons leaving the jurisdiction pending an investigation.'

The Bengal Government enclosed a copy of Mr. Marsden's memorandum, and recommended that a marine Court of enquiry should be distinctly empowered to impound the certificate of any certificated witness in a case until the orders of the Local Government be known, or until such time as it may seem expedient to the Court to return the certificate to its owner.

MR. HOBHOUSE must confess that that was a proposal he could not support: on the contrary, if it were made to the Council, he should think it his duty to oppose it. It might be that a guilty person would be precluded from leaving the port under the proposed rule; but then an innocent person might be also precluded. He could not think it right that a person charged with no sort of crime should have his property taken away from him, merely because he happened to be a witness, and merely because he happened to be the holder of a certificate, until the Local Government thought fit to give orders on the subject, and the Court thought fit to restore the certificate. MR. HOBHOUSE thought that such a rule would be of tyrannical character, and he could conceive its being used heedlessly and in a very oppressive way. He did not think that such a power ought to be conferred unless material grounds were shown to prove it necessary for the public good. If, indeed, the proposal were confined to a person actually charged with misconduct, that would be different; and when his hon'ble friend mentioned the matter, MR. HOBHOUSE did not understand that he was contemplating that every person who appeared as a witness should be subjected to the chance of having his certificate taken away. MR. HOBHOUSE supposed that the Lieutenant-Governor was contemplating only those persons who were charged with misconduct. It seemed to MR. HOBHOUSE that there was no necessity, and on the whole that it was not desirable, to introduce a special power such as this. He thought the law as it would now be amended by this Bill would give sufficient power for detaining anybody really wanted. If a man was wanted as a witness—and it was impossible to conceive a person so implicated in the proceedings as to be the subject of a charge of misconduct who would not be wanted as a witness—then he could be detained under section 15. That power was a new and a stringent one; therefore the Committee had thought fit to guard it by some reasonable

limit of time, and had provided that "no person should be detained by virtue of this section for more than forty-eight hours." It would be very inconsistent if, with that proviso, that no person should be detained for more than forty-eight hours, we were to give the power of indirect detention by indefinitely detaining a document without which the man could not go about his business. Still, when a person was wanted as a witness he might be detained for forty-eight hours. If you wanted to charge him, nothing was easier than to state the grounds, which could probably be done in half an hour, and then he could be summoned under section 10, which provided that the Court might summon any master, mate or engineer to appear, and should give him a full opportunity of making a defence. The Bill had not said that the master, mate or engineer should be bound to attend. The matter was not a criminal proceeding: it was one in which he was charged with misconduct and of course he ought to be able to defend himself: but if he chose he might let judgment go by default; there was no reason why he should be kept to be tried as criminals were tried. Under section 8, the Court had the same power for compelling the attendance and examination of witnesses and for the regulation of the proceedings as if the investigation were a proceeding relating to an offence or cause of complaint upon which the Magistrate had power to convict summarily. It was important to consider what was the practical difficulty we had to deal with or were supposed to be dealing with. He had shown that there were new and stringent powers for the detention of a person for the purpose of evidence, and he might then be charged and the enquiry might go on either in his presence or in his absence. But MR. HOBHOUSE wished to know whether any person charged with misconduct before Courts of enquiry of this kind had ever run away. If a person had run away, depend upon it, it was because the case was of so exceedingly serious a nature that no mere detention of his certificate would suffice to detain the man, but to lose the certificate would be a trifle, compared to the other consequences of the proceeding. It was true that it was stated, in the letter from the Government of Bengal, that recent cases had come under notice in which the imperfect state of the present law had had a bad effect; but he had not found the circumstances of any case stated; and seeing that all the suggestions of Mr. Marsden, which were endorsed by the Local Government, referred to witnesses and to witnesses only, MR. HOBHOUSE could not help thinking that the meaning of the passage was that some cases might happen in which the inability of the Court to detain witnesses would have a bad effect. That was one of the original reasons for this measure, and the Bill was so framed as to amend the law in that respect. He believed that the difficulty which was apprehended, of a man holding a certificate and running away in order to avoid being present on a charge, was entirely imaginary.

He could not conceive that a person who held a certificate and hoped to retain it would do an act which must be his ruin; for if he ran away the case would certainly go against him by default, and by the act either of the Courts here or of those in England he would lose his certificate.

The result was that in MR. HOBHOUSE'S opinion we ought not to give these large indirect powers of detention; they would not be a valuable addition to the Bill. If we wanted more detaining power, we ought to give it directly and not indirectly. But before we gave more power, we ought to be very certain that it was wanted. MR. HOBHOUSE could not say that such powers were wanted, and therefore his own judgment was against the alteration suggested.

The only change which occurred to the Committee which sat yesterday was one of a purely verbal nature—so purely verbal, that it was almost of a clerical nature, and the Committee did not think it necessary to make a report or prepare an amendment on the subject. Section 8 provided that for the purpose of the investigation, the Court, so far as related to compelling the attendance and examination of witnesses and the regulation of the proceedings, should have the same powers as a Magistrate in criminal cases. The Committee proposed to introduce, after the words "examination of witnesses," the words "and the production of documents." In his opinion the clause *as it* stood would mean the same thing, whether these words were put in or not. But he was told that it was customary to insert them. If His Excellency the President would take this as merely a clerical alteration, perhaps the Council might take it as covered by the Report of the Committee. If it was thought that it was taking too great a liberty to do so, he would prefer that the words should be left out, rather than that the passing of the Bill should be delayed.

His Excellency THE PRESIDENT observed, in regard to the point of form, that the omission to introduce the words "and the production of documents" did not appear to him to be a mere clerical error. They were inserted for the sake of making the meaning clearer. He would therefore put the question that those words be inserted in section 8 after the words "examination of witnesses."

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR asked whether sections 8 and 15 of the Bill would certainly enable the Magistrate or the investigating officer to detain a defendant pending an enquiry.

The Hon'ble MR. HOBHOUSE said he conceived that section 15 gave an absolute power of detention of any person who was wanted as a witness – any

person from whom information was wanted. Enquiries under this Bill were not criminal proceedings, and every person who came before the Court was a witness: it was a public enquiry, and the power of detention of witnesses would include the person charged. Section 8 gave to the Court of enquiry the same power as a Magistrate sitting in a criminal case, whatever that power might be: you could hardly give it more power.

His Honour THE LIEUTENANT-GOVERNOR said that, from the explanation just given by his hon'ble friend, it appeared that the Magistrate certainly had the power which His Honour was anxious he should possess. Then, as regards the remarks of the hon'ble member, he entirely agreed to waive any objections that he might have made at the last sitting of the Council, because he now found on consideration that the power he asked for of impounding a certificate was not only fully granted in effect, but more than granted by section 15; because, if you might arrest a witness and detain him for forty-eight hours, it followed that that detention would necessarily detain the certificate: if you could catch the man, you could catch his certificate; if you had the person of the man, we did not very much care about his certificate. Therefore, as he found, and as his hon'ble friend had said, that this stringent power was given to us, His Honour refrained from asking for what appeared to him the very small power he ventured to ask for at the last meeting of the Council. But when his hon'ble friend went on to style His Honour's proposition as tyrannical and oppressive, he must simply reply by expressing surprise that his hon'ble friend failed to perceive that, in using those expressions, he had strained at a gnat, while by section 15 he had swallowed a camel. If to detain a person who was before the Court be tyrannical and oppressive, how much more tyrannical and objectionable was it to enter a ship and detain him forty-eight hours. Therefore, he really must emphatically demur against the application of these phrases to the very harmless proposition he had made. But his hon'ble friend further proceeded to say that this danger was an imaginary one. His Honour could show his hon'ble friend that the danger was not so imaginary a one as was supposed; because, although it was true that a certificated man who was charged, or a witness who absconded, in the face of a tribunal of enquiry, would sooner or later lose his certificate—if he were certificated by the Local Government, his certificate would be cancelled, and if he was certificated by the Board of Trade, we should hope that they would act upon the report submitted to them—yet there were two uncertainties in favour of the man. In the first place, there was always a doubt as to how far the Board of Trade would act upon a report of a Court of enquiry in India; for there had been at least one unfortunate case in which the Board of Trade did not do so. But the main uncer-

tainty in the man's favour was that he might abscond from this port carrying his certificate with him, and proceed to other ports, and under cover of that certificate obtain ships, and if he were a bad man might cause the loss of life and property. The Board of Trade could not ascertain where a man was; how many ports were there to which such a man might resort, and how long would it take before he was found out, and in the meantime how many ships might have been lost through his fault on the high seas. So the danger was not really imaginary, although HIS HONOUR admitted that his hon'ble friend was correct in one respect, that sooner or later the man would be caught. It was therefore a real danger, but was obviated by the stringent power given by section 15 of the Bill; because, if a Magistrate had reason to think that a witness was involved in a charge and was likely to abscond, he might arrest him under section 15, send immediate notice to the Government, and the Local Government might frame a charge against him.

[The Hon'ble MR. HOBHOUSE—The Court could do it itself.]

Then the power was quite sufficient; so that taking one thing with another, after the explanation given by his hon'ble friend, he begged entirely on behalf of the Local Government to accept the provisions of the Bill. He could assure the Council that these stringent powers were very necessary to ensure the safety of life and property in this port and in the rivers leading to this port, and upon the high seas. For although in cases of emergency the officers and men of the mercantile marine still showed the fine qualities for which their service was famous, yet, nevertheless, the cases in which ships were lost in a manner quite unaccountable occurred a great deal too frequently, and the most stringent provisions acted up to to the letter by the Executive Government, would be necessary to rigidly and promptly investigate the causes of such losses, and so to ensure the safety of life and property in this port. So, being moved by these considerations, he very cordially and thankfully accepted the very stringent powers conferred by the Bill.

HIS HONOUR had only one more remark in reference to the observation by his hon'ble and learned friend Mr. Hobhouse regarding the conduct pursued by the Government of Bengal in this case. Though he was very much obliged for the kind manner in which those observations were conveyed, yet he did regret that the proceedings of any Local Government should be commented upon publicly in this Council; because it was obvious that though he might have something to say on behalf of his own proceedings, yet he did not think that this was the proper place, or that it was at all proper, to enter upon a colloquial discussion on the subject. For all the proceedings he had found it necessary to take,

he could assign valid reasons; and if he had occasion to cause inconvenience to his hon'ble friend, he was sorry. He could not promise that he might not still have occasion to cause further inconvenience, but if he had, he should do so as little as he possibly could. He ventured to say that if he had caused any trouble, the trouble was small in comparison to the magnitude of the interests which were involved in the proceedings before this Council. But he was certain that he should have the Council with him when he said that in matters of great importance, certain obstacles raised at the final stages of a Bill—certain delays of a week or a month—were of no importance whatever as compared with the great importance of having our laws framed, not only on sound principles, but also in good practical detail, so that they could be worked thoroughly well. Further, it would appear from the tenor of his hon'ble friend's remarks, that once a Bill was referred to a Select Committee, examined and sent out, all further proceedings were to be stayed; and if, the other members, who had not the good fortune to be on the Committee, had any amendments to make after the report of the Committee had been made, they would be regarded as dealing hardly with the Legislative Department if they should undertake to make exceptions or propose any amendments. His Honour was sure that that could hardly be his hon'ble friend's intention, but so it appeared from the tenor of his remarks, and His Honour must, on behalf of the Bengal authorities, claim that when they had any objections in detail to proposals of the Select Committee, they should be at liberty still to propose for the consideration of His Lordship in Council such amendments as they might think necessary. He was certain it would be found that he had never done so except in the case of a Bill relating solely to Bengal, or in which Bengal had a preponderating interest. They had done what they thought to be their duty, and they did so in a manner calculated to give as little trouble as possible, and certainly insignificant, as compared with the importance of the issues at stake.

His Excellency the President said:—"I am sure that the Council are aware, from the whole course of our proceedings, that no point of form is ever made use of for the purpose of preventing the full discussion of any amendment that may be proposed at any stage of the progress of a Bill.

"If an instance was required, it would be supplied by the course the Council has taken with regard to this Bill, for, in consequence of a suggestion made by my hon'ble friend the Lieutenant-Governor of Bengal, although no official communication had been received from the Government of Bengal on the subject, we at once postponed the passing of the Bill, in order that we might fully discuss the amendment proposed by the Lieutenant-Governor. At the same

time I think that my hon'ble friend, Mr. Hobhouse, was justified in the remarks which he made to the effect that it is very desirable that suggestions with regard to Bills under consideration should, if possible, be made during the early stages of their progress. Our forms and proceedings are well known and exceedingly deliberate, and it cannot but be inconvenient that suggestions and objections which might have been made and taken at the proper time should be deferred till the last stage of a Bill.

"In this particular instance, I must say that there seems to have been very considerable delay in the official communications of the Government of Bengal, and I am sure that my hon'ble friend, the Lieutenant-Governor, will excuse me for suggesting that such delay might, with advantage, be avoided on future occasions. I gather from the paper last circulated, that a circular on the subject of this Bill was issued by the Government of Bengal on the 24th of August last, and communications appear to have been received by the Bengal Government in reply, some time about the middle of December, and yet the Legislative Council were not put in possession of these papers until within the last few days.

"As regards the particular point under discussion, I am glad that my hon'ble friend the Lieutenant-Governor has expressed himself satisfied with the Bill as it stands. It has, I know, been most carefully considered by the Select Committee."

The Motion that the Bill as amended be passed was then put and agreed to.

PROBATES AND LETTERS OF ADMINISTRATION BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the motions that the Report of the Select Committee on the Bill to amend the law relating to Probates and Letters of Administration, be taken into consideration and that the Bill be passed.

Leave was granted.

PORT DUES BILL.

The Hon'ble MR. HOBHOUSE also asked leave to postpone the presentation of the Final Report of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-dues.

Leave was granted.

NATIVE SOLDIERS RIGHTS AND LIABILITIES BILL.

Major-General the Hon'ble SIR H. W. NORMAN moved that the Report of the Select Committee on the Bill to remove doubts as to the rights and liabi-

lities of certain Native Soldiers, be taken into consideration. When he moved for leave to bring in this Bill, he had stated that certain Native Soldiers had not been attested as required by Act V of 1869. It was believed that that omission did not really interfere with the legal obligations of the Soldiers; but to remove all doubt it was determined to introduce this Bill. The Bill had been considered by the Select Committee who had no amendments to suggest and recommended that the Bill be passed.

The Motion was put and agreed to.

Major-General the Hon'ble SIR H. W. NORMAN also moved that the Bill be passed.

The Motion was put and agreed to.

SIR JAMSETJEE JEEJEEBHOY'S LOAN BILL.

The Hon'ble MR. ELLIS introduced the Bill to secure the repayment of a loan by the Government of India to Sir Jamsetjee Jeejeebhoy, Baronet. He said that the Bill, although it appeared to be a long one, was lengthy only owing to its having been deemed advisable to make certain recitals to show the course of previous proceedings. The operative part of the Bill was exceedingly short; it merely provided that the interest of the promissory notes which had been vested in trustees for the benefit of the holder of the title for the time being, should be withheld by the Government in discharge of the loan advanced for the payment of the debts of Sir Jamsetjee Jeejeebhoy. The trust consisted not only of a sum of money, but also of an estate. It was not necessary to provide for the mortgage of the estate, because the sum receivable as interest on the promissory notes more than provided for the repayment of the principal and interest within a reasonable period. Accordingly, the Bill simply gave power to take for interest and principal the sum of Rs. 40,000 for seventeen years, unless the sum advanced with interest at five per cent. were sooner repaid. As there was nothing in the Bill which demanded consideration by a Select Committee, MR. ELLIS did not propose to refer it to a Committee, but should on a future occasion proceed with the Bill.

MADRAS SALT BILL.

The Hon'ble MR. ELLIS also introduced the Bill to amend the law relating to Salt in the Presidency of Fort St. George, and moved that it be referred to a Select Committee, with instructions to report in three weeks. He said that he had at present little to add to what he had said on a former occasion. The Bill, as he had then explained, did not render it imperative on the Government of India

to carry out at once the measure which it empowered the Government to take, but merely enabled the Government, if on further consideration it should deem fit, to substitute for the present selling-price, an excise-duty at the fixed rate of Re. 1-13-0 per maund or less. The Bill was a short one. It provided that the Governor General in Council should have power to impose a duty not exceeding that amount, and also directed that, if it should be so determined, the selling-price for all salt which the Government of Madras might sell should be so fixed as to produce that duty plus all the charges incurred in the manufacture, storage and transit of salt and from wastage. In the Committee we should have the advantage of the experience of his hon'ble friend Mr. Dalyell in the matter, and we should also give time to the Government of Madras for any suggestions which it might see fit to make in regard to the measure.

The Hon'ble MR. DALYELL said that, as only one week had elapsed since his hon'ble friend had obtained permission to introduce this Bill, he (MR. DALYELL) had not had time to receive a reply to a communication which he had thought it his duty to make to the Madras Government, nor had he had an opportunity of consulting the papers in connection with the Bill, which he understood were now in course of printing for circulation to the Council. Consequently, he must defer any comments on the general policy of the Bill, and any explanation of the change of opinion in regard to the Bill on the part of the Madras Government, to which his hon'ble friend (Mr. Ellis) had adverted, to some future stage of the measure. MR. DALYELL would therefore confine himself that day to a few brief observations which had been suggested to him by the remarks which fell from his hon'ble friend last week. His hon'ble friend had then said that the main advantages which he expected to derive from the Bill were three—first, an increase to the salt-revenue; secondly, the equalization of the salt-duty in southern India; thirdly, the opening out of the salt-trade to private enterprise. As far as MR. DALYELL had been able to make out from the consideration he had been able to give to the Bill during the past week, he questioned very much whether his hon'ble friend's expectations would be altogether realized if the Bill was passed in its present shape and if the powers taken under its provisions were put into operation. As to the anticipated increase of revenue, the Bill, if put into force, would require that a duty of Re. 1-13-0 be charged on all salt sold in the Madras Presidency, and that the price should be fixed by adding to that sum such an amount as the Madras Government might determine to be the proper cost of manufacture, sale, storage and wastage of salt. His hon'ble friend last week had told the Council that, of the present price of two rupees charged on salt sold, three annas were taken to represent the cost of transit, manufacture, and sale, and Re. 1-13-0 the duty; but that practically,

this assumption was only correct in regard to salt manufactured and sold on the Eastern Coast, as the salt sold on the Western Coast actually cost the Government something over seven annas the maund. The actual fact was, that this theory of three annas representing the cost of manufacture and sale was not strictly correct as regards salt sold either on the Eastern or the Western Coast. On the Western Coast salt certainly cost considerably more than double this theoretical price; but his hon'ble friend was not perhaps aware that in no district of the Eastern Coast did the cost amount to quite so much as three annas per maund, and in some districts the cost was very much less. He would probably, however, remember when the Salt Act of last year was passed, it was explained that the actual cost of the manufacture of salt in the Ganjam District was not in excess of two annas per maund; and MR. DALYELL quite believed that if a careful investigation were made into all the items of charge in the Eastern Districts, as must be done if the Bill were passed into law and put in force, it would be found that the actual average cost of the manufacture and sale of salt in the Eastern Districts, if only charges properly debitable were included, was not in excess of two and a half annas per maund. The result, then, of passing the Bill in its present shape would be this, as far as the revenue was concerned—that on the Western Coast there would be an increase of four annas on every maund of salt consumed, but on the Eastern Coast there would be a decrease of half an anna upon every maund sold. Now, speaking roughly, he thought he might say that the sales of salt on the East Coast were just about eight times the sales on the Western Coast; consequently, the increase of revenue obtained on the Western Coast by adding four annas to the cost, would be lost on the Eastern Coast by the deficit of half an anna; and he very much feared that his hon'ble friend's anticipated addition to the imperial exchequer would altogether disappear.

Then, as to the opening out of the salt-trade to private enterprise, no doubt if the Bill were passed the Bombay salt-traders would be able to export salt from Bombay to the West Coast of the Madras Presidency on their own account, instead of on behalf of Government as they did at present. But he questioned whether the Government salt on the East Coast would not be able to undersell them, being carried over by railway, if the full duty of Re. 1-13-0 were charged on all shipments of Bombay salt. Then his hon'ble friend seemed to suppose that this Bill would facilitate the introduction of Cheshire salt into Madras. There was nothing to prevent the introduction of any quantity of that salt at present, except the high price of the article itself; and so long as Cheshire salt cost from twelve to thirteen annas a maund without duty, it was quite futile to suppose that it would ever be able to compete with

Madras salt which cost something like three annas, or Bombay salt which cost about seven annas. It was quite fallacious to suppose that, because the salt-tax in Madras was collected under a system of monopoly that therefore the Government was in any way opposed to the introduction of foreign salt. It made no possible difference to the Government whether the duty was collected under a monopoly or by an import-duty; and so far from throwing difficulties in the way of importers, on a recent occasion within MR. DALYELL'S knowledge, when a firm in Madras desired to introduce a shipment of Cheshire salt, they were given peculiar and special advantages, which of course would not be continued if the trade became general. In spite, however, of these special concessions being allowed, and every advantage obtained, the experiment proved a complete failure. The greater quantity of the cargo had to be re-shipped and sent to the Calcutta market, and what remained was sold by auction in Madras, at, he believed, something less than the duty which had been paid on it.

The third result which his hon'ble friend predicted for his Bill was that the salt-tax throughout the southern Presidency would be equalized, and this MR. DALYELL admitted his hon'ble friend might reasonably expect to obtain. If the Bill had gone further than it did—if it had equalized the salt-duty all over India—it would certainly have obtained his (MR. DALYELL'S) unqualified support. But he questioned whether there was any practical advantage in insisting upon this equality throughout the different localities in a small section of the empire, so long as differential rates of duty were permitted to exist in other Provinces. At the same time, he must confess that there was great force in this part of his hon'ble friend's argument, and MR. DALYELL wished, therefore, to defer giving any decided opinion either for or against the Bill, until he had an opportunity of going more fully into the question than he had yet been able to do, until he had considered the papers in connection with it, and until he had heard the other arguments in its favour, which he had no doubt would be brought forward by his hon'ble friend with his usual vivacity in Select Committee.

The Motion was put and agreed to.

MAJORITY BILL.

The Hon'ble MR. HOBHOUSE moved that the Hon'ble Messrs. Inglis, Dalyell and Eden be added to the Select Committee on the Bill to establish a uniform age of majority for persons domiciled in British India.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to amend the law relating to Salt in the Presidency of Fort St. George —— The Hon'ble Messrs. Hobhouse, Inglis and Dalyell and the Mover.

The Council adjourned to Tuesday, the 16th February 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 9th February 1875.

Office of Suptdt. Govt Printing—No 628 L D—16-2-75—230

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 16th February 1875.

PRESENT :

His Excellency the Viceroy and Governor-General of India, G. M. S. I., *presiding*.
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble John Inglis, C. S. I.
The Hon'ble R. A. Dalyell.
The Hon'ble H. H. Sutherland.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble Sir Douglas Forsyth, K. C. S. I.
The Hon'ble Ashley Eden, C. S. I.

CIVIL APPEALS BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the motion that the Reports of the Select Committee on the Bill to amend the law relating to Civil Appeals in the Lower Provinces of the Presidency of Fort William be taken into consideration. The reason for the postponement was this. The Council would recollect that, of the objections which were insisted upon by those who opposed to this measure, by far the most substantial was that the state of the Courts in the Mofussil was such that it was hopeless to expect the looked-for results. It was said that those Courts were too weak to bear the extra strain which it was said would be thrown upon them, and that it would be better not to attempt to alter any portion of the system of appeal until they were first strengthened. The answer to that was, that whatever amount of truth there might be in the assertion, it was no sufficient objection to this Bill; that there was no speedy prospect of the improvement of the Mofussil Courts; that it was better to take the partial reform which could be got and which was aimed at by the Bill; and that the principle upon which it was sought to classify

appealable cases was a sounder one than the existing principle, and would work in better with any conceivable plan of reform.

Now the position of affairs was very much altered. The Lieutenant-Governor of Bengal had been giving his attention to this difficult subject of strengthening the Mofussil Courts, and he informed us that he was prepared to propound some definite plan upon the subject, and asked us to stay our hand in passing this measure, lest we should do something which should mar or hinder his operations. MR. HOBHOUSE conceived that, under those circumstances, the Council had nothing to do but to accede to His Honour's wishes; to delay the consideration of the Reports of the Select Committee, and thereby to leave the matter yet awhile in the hands of the Committee. But MR. HOBHOUSE must ask his hon'ble friend if he would not join them on that Committee. His Honour thought that the Bill could be amended in such a manner as to introduce the alterations he deemed to be necessary and feasible. How that might prove to be, MR. HOBHOUSE could not yet be quite sure. Perhaps it might be so if all the Council were asked to do was to re-adjust some of the details of the Bengal Civil Courts' Act. But if there was any substantial increase to the judicial staff, or if there was to be any substantial addition of new officers, then he conceived that this Council could not discuss such matters with any advantage, perhaps not with propriety, until the necessary executive decision had been arrived at. They could best consider in Select Committee what were the exact kind and quantity of the alterations proposed; whether such alterations could be properly embodied in the measure now pending before the Council; and if it turned out that they could not be so embodied, whether it would not still be better to pass the Bill as being a step in the direction of improvement in which all wished to advance, and a step which would not interfere with, but would help and aid, further steps in the same direction. The presence of the Lieutenant Governor would be of great assistance, indeed under the circumstances almost necessary, for the proper discussion of these proposals: therefore, if MR. HOBHOUSE were allowed to postpone the motion, he would ask His Excellency the President's permission to allow him to move that the Lieutenant Governor be added to the Select Committee on the Bill.

His Honour THE LIEUTENANT-GOVERNOR had only one word to say, which was to express his satisfaction at the announcement which his hon'ble friend had made, and to convey his thanks to him and His Lordship the President for the consideration shown to the opinions and wishes of the Local Government. HIS HONOUR should of course be most happy

to attend the Select Committee at any time they might desire; but he hoped it would be understood that he did so on the condition that it should not prejudice the submission of such executive proposals as he might have to make to the Government of India. He certainly apprehended that the improvements it was desired to introduce into the Bill might so materially alter it as virtually to make it a new Bill, and that there would be involved in the proposition a variety of details and matters which could hardly be considered with advantage in the Legislative Council until some decision had been arrived at by the Government of India in the Executive Department. And HIS HONOUR must say that he could not share his hon'ble and learned friend's opinion that this Bill, if passed as it was, would at all help the progress of the improvements which the Bengal authorities desired to see carried out. On the contrary, he believed that, if the Council should upon this occasion pass this Bill, and thereby fail to adopt the proposals which the Local Government were so anxious to press upon the consideration of the Council—if sanction should not be obtained now to these proposals, he believed that their progress must be indefinitely postponed. He could not too earnestly impress upon the Council that now was the time to take up the whole question of the improvement of the Appellate Law in Bengal. That work should be done deliberately and considerately, with ample time for the Local Government and its officers to submit all they had to say, and after full deliberation, a reform complete, radical and comprehensive should be made—such a reform as would be approved of by the judicial authorities, and, above all, give satisfaction to the Natives of Bengal, whose interests were so deeply concerned in the matter. And HIS HONOUR earnestly submitted that, unless a reform of that kind could be undertaken, it might be better to leave the law alone for the present and not to attempt a measure of this kind, which might do good in some respects, but could not be satisfactory as a whole. Therefore, although he was most willing to attend the Select Committee, and he thought that by that means some advantage would be obtained, that was to say, he would be better acquainted with his hon'ble friend's views, and his hon'ble friend would know the exact propositions which were made by the Bengal Government and its officers, he could hardly hope that such a course would really solve the very grave questions involved in the consideration of the present Bill.

His Excellency THE PRESIDENT said:—"I am sure Members of Council will feel with me that it will be a great advantage that my hon'ble friend, the Lieutenant-Governor, shall join the Committee. The subject of the alteration of the Law of Civil Appeals is of great importance. It has already been long

considered, but it is one of those questions upon which, I fear, we can hardly hope to find any great unanimity of opinion. In fact, the interests involved are so different and conflicting, that even when the subject has been thoroughly threshed out—and we shall be very glad, either in the Legislative or the Executive Council, to take into consideration any views which my hon'ble friend, the Lieutenant Governor, may, after mature deliberation, express, or any changes which he may advocate in the constitution of the Lower Courts—if any reform is to be made, we shall in the end be compelled, after due consideration of all the arguments that have been adduced, to come to a conclusion as to what should be done, and to carry that conclusion into effect, even though we may find opposition to it in some quarters. I cannot think it would be right for the Government to allow the present unsatisfactory state of the law, which has long existed, and which my hon'ble friend, the Lieutenant Governor, fully admits, to prevail much longer without applying a remedy, simply because the remedy which it is proposed to apply may not be in accordance with the views entertained by some among those who will be affected, in one way or another, by a change in the law.

"It would be premature now to remark upon any of the proposals which my hon'ble friend may bring forward, because they have not as yet I believe come officially to the knowledge of the Executive Government in a mature form. I can, however, assure my hon'ble friend, that we shall treat his suggestions with all the respect to which they are entitled, both from his own position as Lieutenant-Governor of Bengal, and from the importance of the subject itself."

Leave was granted.

The Hon'ble MR. HOBHOUSE then moved that His Honour the Lieutenant-Governor be added to the Select Committee on the Bill.

The Motion was put and agreed to.

PRESIDENCY POLICE MAGISTRATES' BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to extend certain parts of the Code of Criminal Procedure to the Courts of the Police Magistrates in the Presidency Towns and to increase the jurisdiction of such Courts.

PROBATES AND LETTERS OF ADMINISTRATION BILL.

The Hon'ble MR. HOBHOUSE also presented a further Report of the Select Committee on the Bill to amend the law relating to Probates and Letters of Administration.

BURMA FISHERIES BILL.

The Hon'ble MR. EDEN presented the Report of the Select Committee on the Bill to regulate Fisheries in British Burma. On the introduction of this Bill it was explained by the hon'ble Mr. Hobhouse that its object was to give legal effect to the system long in force in British Burma of raising a revenue from fisheries, which was regulated by rules which had not the force of law, and which it was necessary to revise from time to time. As a thorough revision of the rules had recently taken place, it was considered advisable to pass a Bill to give them legal effect. The changes made three years ago in the mode of working the fisheries were chiefly in consequence of a report by Dr. Day, Inspector General of Fisheries, to the Government of India, after careful investigation on the spot. He pointed out the great evils and abuses which existed under the old system. The terms which had hitherto regulated the leasing of fisheries had been practically made by private contract between the Native officers of Government on the one part, and the persons who desired to work the fisheries on the other. The fisheries were until recently let by annual leases, and very frequently different persons were selected each year. The selection of the lessees was unfortunately, and perhaps unavoidably, left very much in the hands of the subordinate Native officials, and consequently a system of bribery and corruption had sprung up which had led to a most unsatisfactory state of things. But recently, after consultation with the district officials, a new system was introduced, by which the fisheries were let for periods of five years, and the leases were put up to public competition, the bidders being only persons holding certificates of qualification from the district officer. This qualification was based on the residence of the bidder within a certain distance of the village in the vicinity of which the fishery was situated, the object being to ensure the interests of the villagers in the working of the fishery, and to exclude men from distant parts of the country, who might work it to the detriment of the villagers as a matter of speculation. This system had worked remarkably well, not a single complaint having been made and the revenue having considerably increased. As the people themselves explained, they were now able to pay larger sums for their leases, the money which formerly went in litigation and in bribing the petty officials and intriguing to upset leases, being now paid for their leases at the auction-sales. It might be said that if the rules were working so well, why was it necessary to pass a law to give them legal effect? The reason for passing a law was that there were certain matters—such as the recovery of arrears from defaulters, the enforcement of the responsibility of sureties, the protection of the public rights as to the use of water; the construction of weirs and breaches of fishery rules—which required to be regulated by law.

On the last occasion on which this Bill was before the Council, doubts were expressed by two hon'ble members as to the right of the Government, as defined by the recitals in the preamble, to the fisheries in British Burma. MR. EDEN thought that those doubts arose under some mistaken idea that the Government were now for the first time about to raise a revenue from fisheries in Burma. He could assure the Council that such was not the case: so far from resuming fisheries which had not hitherto been under assessment, the tendency was to release a large number of fisheries to provide water for agricultural and other purposes. All, or nearly all, the fisheries upon which revenue was now raised had been liable to the payment of revenue from the first occupation of the country by the British, and scarcely any fisheries had been brought under assessment within the last ten or fifteen years. On the annexation of Pegu it was found that the Native Government were raising a revenue in this way, and we simply took up their practice. MR. EDEN had, however, with reference to the question which had been raised in the Council, called for a report as to whether any objections had been made as to the right of the Government to raise this revenue, and the result was that not one single individual consulted could call to mind any occasion on which any objection or claim adverse to the right of Government had been made. He had in addition taken the opinion of the old ex-officials of the Native Government, and they stated that the Government had from time immemorial raised a revenue from fisheries, although they said many years ago some rights had accrued to certain hereditary officials—local governors and so forth—but at the time of the Emperor Alomprah, the whole of the fisheries were resumed. The Bill moreover had been published more than a year ago, and every invitation had been publicly made without a single objection having been raised. Therefore, he thought we might assume that the recital contained in the preamble of the Bill was incontestible, and that there was no objection to the Bill.

BURMA COURTS BILL.

The Hon'ble MR. EDEN also presented the report of the Select Committee on the Bill for the further amendment of the Burma Courts Act, 1872. The Bill had been very considerably altered in Select Committee, but mainly in this respect, that in consequence of a number of small verbal alterations made in the existing Acts on the subject, it had been determined to consolidate the law and to re-enact the whole in one Bill. Such amendments in detail as were made in the Bill he proposed to notice when the Report of the Select Committee came under the consideration of the Council.

BURMA LAND REVENUE BILL.

The Hon'ble MR. EDEN also moved for leave to introduce a Bill to declare the law relating to interests in land and to regulate the assessment and collection of land-revenue, capitation-tax and other taxes in British Burma. The system under which the revenue in British Burma had hitherto been raised had been regulated by certain rules which originally had the force of law, but of which many had become obsolete, and which had been altered and amended from time to time as the altered condition of the Province required: the alterations and amendments made had not, however, the same force of law as the original rules had. Consequently, four years ago the Government directed the preparation of a draft Bill to regulate the assessment and collection of the land-revenue, the salt-tax and other taxes. The whole subject had been under consideration with the most experienced revenue officers since that period, and lately the Government of India had definitely declared the general principles upon which the Bill should proceed.

As the revenue-system of British Burma was different from the systems in force in other parts of India, he should briefly explain the principles upon which that system was based. Perhaps the land-revenue system of Burma more nearly resembled the system in the Bombay Presidency than in any other part of India. It was a ryotwári system pure and simple, there being no intermediate holders between the State and the cultivator: all contracts for the cultivation of the land were adjusted between the Government and the cultivators of the soil. The land was held to be the property of the State, subject to such interests as were allowed to accrue thereon from time to time. When we first occupied the country we found that the Native system of land-revenue took the form of a tax on ploughs and bullocks, the theory of which was that each plough and pair of bullocks cultivated a certain quantity of land. For convenience we at first adopted that system, but it was soon found that that rough assessment affected different classes of cultivation very differently, according to the nature of the soil. When, therefore, Mr. John Colvin was Commissioner of Tenasserim, he, with the assistance of Lieut. Phayre, first attempted to introduce the system of a rate upon land, and the scheme then introduced remained in force until the annexation of Pegu. When Pegu was annexed, the same system was adopted by Sir Arthur Phayre, and the rules he drew up then were the Code which existed up to the present time, subject to certain alterations and amendments. The country was divided into Divisions, each Division being under a Revenue Commissioner; the Division was divided into Districts analogous to the Districts under the administration of Collectors; the District was divided into townships,

which might be compared to the tahsíldárships in the North-Western Provinces, and each township was sub-divided into revenue-circles, each of which was in charge of a Thoogyee or collector of taxes, who was responsible for the details of the revenue-assessment and the collection of the revenue in the circle. He again was assisted by an officer who was a volunteer worker, who was the head of ten houses, and who attended to the details of collection. The Thoogyee's duty was to prepare a rent-roll showing the rental of each cultivator, and the quantity of land cultivated by him; this rent-roll was filed in the Court of the Deputy Commissioner, who prepared a receipt or ticket for the rent for which each cultivator was liable; the Thoogyee then went to the tenants, collected the money, and paid it into Court, giving to the cultivator by whom the money was paid his ticket duly endorsed. Where there was default in payment, the Thoogyee presented a petition to the Deputy Collector, who proceeded against the defaulter in the manner prescribed for the recovery of arrears of revenue. But Mr. Eden was happy to say that cases of default very seldom occurred. The measurement and assessment of lands had hitherto been made annually, and although great inconvenience was caused thereby, the cultivators had for a long time preferred that practice to the system of leases; but now that the Settlement Department had been established, the people were taking gradually to a settlement for five or ten years, and preferred it to the annual measurement which formerly prevailed.

The only right in the land possessed by the people was the right of occupancy which accrued by twelve years' continuous occupation of the same land: this gave a complete transferable and heritable right, subject to the payment of the rates and revenue assessed from time to time on the land. In point of fact, the cultivators were perfectly protected by the fixity of the tenure they enjoyed, and this with the very low assessment placed upon the land had caused a great increase of cultivation within the last twenty years; no doubt the extraordinary prosperity of the cultivating classes was owing to the fact that, except the small proportion which went to the Government, the profits went entirely to the cultivators, and none to any description of middlemen.

Though some alterations were proposed in the details of the revenue-system just described, the general principles of that system would continue as heretofore. The only considerable change which was proposed was with regard to a cultivator having a right of occupancy who abandoned his land and returned to it after the lapse of several years. This it was proposed to provide against in consequence of the mischief done by a person who went away, and after

several years returned and claimed the land with all the improvements which were made during his absence by some unsuspecting person who settled upon the land believing it to be waste-land. The right to recover was proposed to be limited to twelve years after the abandonment of the land, and to be subject to the payment of compensation for improvements made by the new comer.

The Bill provided for the levy of a cess of five per cent in addition to the ordinary assessment of the land-revenue. This was no new assessment; it had been levied for many years, in addition to the ordinary assessment, for local purposes; the proceeds of this cess were devoted to particular purposes, such as the maintenance of the Post, the establishment of Schools, and for Police. The Bill also regulated the collection of the capitation-tax, which was a very old tax in force for many years, and which it was not proposed to alter in any way. The salt-tax would be continued to be collected as now. In consequence of the capitation-tax, a very low duty was levied upon salt, and it was collected by a system of excise on the outturn of each boiling apparatus, the local excise-duty being kept as nearly as possible at the minimum rate of the customs-duty: they were both liable to be varied from time to time. The only other tax provided for by the Bill was a miscellaneous tax, or license for the preparation of particular sorts of forest-produce, such as cutch, bees-wax, honey, and the like—all of which were now in force. In no part of the Bill was there any proposal for new taxation.

The Motion was put and agreed to.

The Council adjourned to Tuesday, the 23rd February 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 16th February 1875.

Office of Supdt. Govt. Printing.—No. 663 L. D.—19-2-75.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 23rd February 1875.

PRESENT :

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble John Inglis, C. S. I.
The Hon'ble R. A. Dalyell.
The Hon'ble H. H. Sutherland.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble J. R. Bullen Smith.
The Hon'ble Sir Douglas Forsyth, K. C. S. I.
The Hon'ble Ashley Eden, C. S. I.

CIVIL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE moved that the Select Committee on the Bill to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature be re-constituted, and said :—

"The motion which I have to make is one which is usually put without a word of remark. But the position of the measure to which this motion relates in very peculiar, and I must just explain to the Council how it is situated before I can ask them to appoint a fresh Committee.

"The Bill was framed in the year 1864 under the auspices of Sir Henry Harington, a gentlemen who, I believe, took an active part in the passing of the existing Code, and who certainly was one of the first authorities in India on the subject of Procedure. It was published in the early part of 1864 before its introduction, and it was in the month of November 1864 that Sir Henry

Harington introduced it into the Council. He then gave his reasons for thinking that it was desirable to redraw the Code at that time.

"So far as those reasons depend on general principles, there is no need to repeat them at this time of day. So far as they depend on circumstances peculiar to the case in hand, the Council, I am sure, would sooner hear them in Sir Henry Harington's words than in mine, and I will make no apology for reading a somewhat long extract from his speech:—

"'Notwithstanding what he had just said in favour of the periodical revision of Codes of Procedure and of substantive law, he should not have taken upon himself to propose, at this particular time, a revision of the Code which now regulated the proceedings of the Civil Courts throughout the British Territories in India, with exception to the few places which he had mentioned, had the sole object of the Bill prepared by him been to supply omissions or to cure defects brought to light in the working of the Code during the period that had intervened since its introduction, or to remove doubts which had arisen as to the intent and meaning of some of the sections. Were this the only purpose for which legislation was now required, he might have been content to allow the Code to remain in operation for some further time before any general revision was attempted. But during the period that had elapsed since the Code became law, great and important changes had taken place in the judicial agency of the country as well as in the substantive criminal law in its relation to the administration of civil justice. As noticed in the Statement of Objects and Reasons published with the Bill, acts committed in the Civil Courts, or in connection with the processes of those Courts, which before the passing of the Indian Penal Code were not offences, had by that Code been made offences, and were now punishable by the Criminal Courts. It had been found necessary to enact rules showing by what Courts these acts were to be taken cognizance of, and how they were to be brought before the Courts who were to try them. The Supreme and Sadr Courts at the three Presidencies had been abolished, and their places had been taken by High Court, the proceedings of which on the civil side, except in the exercise of their testamentary, intestate and matrimonial jurisdiction, were required to be regulated by the Code of Civil Procedure. The office of Master, in which a large and very troublesome portion of the business which came before the late Supreme Courts was performed, had been done away with. Courts of Small Causes had been established in many parts of the country beyond the limits of the Presidency Towns, the proceedings of which were also required to be regulated generally by the Code of Civil Procedure. The Code had been extended to many places not subject to the general Regulations—such as the Central Provinces, Oudh and British Burma—the circumstances of which were peculiar, but not being known to the framers of the Code they had made no provision to meet them, and under the operation of an Act recently passed, the offices of Hindú and Muhammadan Law Officers had been abolished, and the Courts would no longer have those officers to apply to for an exposition of the law when questions of inheritance and succession, and other questions requiring to be determined according to Hindú or Muhammadan law, arose in suits coming before them.

"'These and other changes had already led to the passing of several Acts to amend the Code of Civil Procedure, and legislation was called for on many points connected with the

procedure of the Courts, particularly the High Courts. One of the Acts passed to amend the Code was to some extent a consolidating Act, but still the laws constituting the Code of Civil Procedure were much scattered, and further legislation, as already noticed, being necessary, it seemed desirable, instead of adding to the number of Acts by which the Civil Courts were to regulate their proceedings, that the opportunity should be taken to pass a single or consolidating Act, which should be complete in itself, and which should amend whatever experience might have shown to be defective in the existing Code.

"'Immediately after the establishment of the High Court of Judicature at Calcutta, it was found necessary to introduce a temporary Bill to provide for the levy of fees and stamp-duties in proceedings before the Court, and to suspend the operation of some of the sections of the Code of Civil Procedure in their application to the Court.

"'It was pointed out at the time of the introduction of the Bill, that when the Indian Legislature passed the Code of Civil Procedure (from the operation of which, as he had already mentioned, the late Supreme Courts had been expressly exempted), it contemplated that a separate Code of Civil Procedure would be prepared for the High Courts whenever they should be established; and further legislation was promised as soon as the High Courts had been established a sufficient time to admit of an opinion being formed as to whether any, and what other, alterations of the existing Code were necessary. The present seemed to be a fitting time for fulfilling the promise thus given".

"Well, these reasons appeared satisfactory to the Council, and the Bill was referred to a Select Committee. The publication of the Bill produced an enormous volume of commentary, which the Committee proceeded to examine, and the result of their labours was, that they altered the draft in a number of particulars and had it republished in the month of April 1865. That draft of April 1865 is the draft which is still lying before the Council.

"It so happened, however, that the Indian Law Commissioners, from whom the existing Code originally proceeded, took a different view from this Council regarding the expediency of redrawing the Code at that time. They thought that the time was too early for so large an operation, and that for some time to come it would be better to amend particular points as occasion required. The Secretary of State concurred in that view, and so no further step had been taken from that day to this.

"Well, now nearly ten years have gone by, and the reasons for redrawing the Code which existed in 1864, have been considerably augmented. Although it was said that the amendments contemplated by Sir Henry Harington might be effected by separate Acts, yet in point of fact very few have been so effected. Where, however, they have been effected, so much of the Code enacted in 1859 has become obsolete. Again, besides the Acts passed for directly amending

the Code, a number of Acts have been passed bearing on it indirectly, each of which renders some alteration desirable. Amongst such Acts I may enumerate the following :—

The General Clauses Act of 1868.
The Prisoners' Testimony Act of 1869.
The General Stamp Act of 1869.
The Court Fees' Act of 1870.
The Limitation Act of 1871.
The Evidence Act of 1872.
The Criminal Procedure Code of 1872.
The Oaths Act of 1873.

"Each of these Acts has the effect of rendering some portion of the Code inapplicable to present circumstances, and it therefore becomes desirable to strike away those dead portions, so that the reader of the Code may not be distracted or misled by finding on the face of the written law that which is not law, or which is expressed elsewhere in some different shape.

"Again, there has been a much larger number of decisions which point to some shortcoming in the Code as it stands; perhaps it may be some defect of expression; perhaps some absence of direction on a point on which the need of direction has been felt; or it may be something in which the best rule for the suitors has not been laid down. Of course it is quite out of the question to embody all decisions into the written law, or even any large portion of the decisions; but it is desirable to embody those which are of a broader scope and are applicable to cases likely to recur frequently.

"For the foregoing reasons, it is proposed to take up now the work which was broken off in the year 1865, and we have for some time been employing ourselves on that business in the Legislative Department. I will explain to the Council the main features of what we have done, and also what I shall ask the Committee to do if it is appointed.

"In the first place we have attempted to make a rather more methodical arrangement of the various parts of the Code. The present arrangement of the Code is so good that I should not wish to recast it for the sake of re-arrangement alone; the gain of such a process would not be worth the disturbance. But when we are making a number of other alterations, the disturbance is already created; people will have to learn the Code in its altered shape; and then something more or less of alteration signifies little. Therefore, we propose to take the opportunity of making those improvements in form which

those who come afterwards can always make even in the very best of first attempts.

"The general features of the proposed arrangement are as follows:—

"After a few preliminary sections, we take a suit of the most ordinary description from its commencement by the plaintiff, and we follow it through its chequered career up to its triumphant goal in the execution of the decree. That takes up some 350 sections of our draft; about half of our draft is occupied with the ordinary incidents of an ordinary suit. Next we take events which may or may not happen; what I may call the extraordinary incidents of an ordinary suit; for instance, a party may die or may be married, a witness may be abroad, a local investigation may be wanted, and so forth. This part of the Code shows what is to be done in those cases. Then we deal with particular classes of suits, such as suits by paupers or by mere stake-holders, a suit by or against Government, a corporation, or a lunatic. Then come some chapters on Provisional or Interlocutory Remedies, which are wanted in order to prevent property from disappearing or from being injured pending litigation, such as Injunctions, and Receivers; and then some on special modes of proceeding which are not of the nature of regular suits, such as references to arbitration, and the summary procedure provided for a particular kind of mercantile contract, the contract by negotiable instrument. Having thus exhausted the various kinds of action wanted from the Courts of first instance, we proceed to the important subjects of Appeals, Reviews, and References to the High Courts; we devote a separate part to the High Courts established by Royal Charter; and we complete the body of the draft by a few sections comprising some miscellaneous matters which it is not convenient to classify under any of the other heads.

"We have also taken a considerable number of decided cases, and have attempted to interweave the decisions into the Code, sometimes by inserting a few words in the body of a section, sometimes by adding an explanation, and more often by way of illustration. To some extent this is done by Sir Henry Harington's draft of 1865, but it is done only to a small extent, and the progress of time has enabled us to do it now on a larger scale. We have in some instances added provisions on points of practice which appeared to us to be useful, borrowing them mostly from rules or circular orders issued by one of the High Courts, and occasionally from the New York Code of Procedure, or from the practice of the English Court of Chancery. And finally we have appended a large quantity of forms of proceedings likely to be useful to country practitioners, and which will tend, as we believe, to make practice more simple and more accurate.

"Of course it would be quite idle for me to attempt to explain here all the alterations which we have introduced into the draft, for though most of them are small and involve no important principle, they are very numerous. But numerous as they are, I can say with truth, as Sir Henry Harington said before, that the main principles of the Code are unaltered, and, indeed, that the bulk of its matter remains substantially intact. I will, however, mention two points on which we have introduced alterations of some importance.

"One alteration relates to the subject of Executions, and it originated in some suggestions made by the High Court of Calcutta. At the present time a decree is treated by many creditors as a rather eligible mode of investing their money. The interest is good and the security very good. It is true that, under the Limitation Act, the creditor cannot enforce his decree if three years have elapsed since some step taken to enforce it; but the only result of that provision is, that some formal step is taken every three years, and, practically, the decree runs on unsatisfied and hanging over the debtor, it may be for fifty years or more. On receiving suggestions from the High Court of Calcutta on this subject, the Government of India consulted the Local Governments, and the result was a very general agreement (of course I do not mean an universal one) that the present state of things was highly inexpedient, and that a change of law should be made in the direction suggested by the High Court for the purpose of checking the practice. It was then decided to propose a modification of the law as follows. We propose to keep the present rule that a decree shall become extinct if unused for three years, and to graft on it two important additions, one being that, on every application for execution after the first, the creditor shall be bound to show that he had really tried to obtain execution, but had failed to do so; and the other being that, however many applications may be made, a decree shall not remain in force more than twelve years, unless the creditor has been prevented from reaping its fruits by some wrongful conduct of his debtor. Then it is proposed to provide that, in the case of decrees for land, mesne profits shall be recovered for only one year after the date of the decree, and that, in order to make a decree operative after a man's death and against his heirs, the creditor must give a written notice to the heirs within a year after they have come into possession of their inheritance. These alterations we have woven into that part of the Code which relates to the subject of execution of decrees.

"The other alteration which I mentioned as being of importance relates to a kindred subject, that of the debtor's inability to answer the decree against him. At present the Code contains the germ of an insolvent law,

but it is nothing more than a germ. By section 271, when a sale takes place under a decree, the proceeds are first to be applied in paying the holder of that decree, and then are to go rateably, and without any priority, amongst the holders of other decrees. That provision for rateable distribution is a very rudimentary law of insolvency. Then follow, in section 273 and some subsequent sections, some provisions for the discharge of arrested debtors; but they are very meagre and not very consistent with one another. Their general effect is this, that an arrested debtor may apply for discharge on giving up all his property; that if the court discharges him his person is not to be arrested again under the same decree; and the decree-holder is to be paid out of the proceeds of his property. But his person is not protected as against any debt other than that for which he has been arrested: his property is not protected at all; and no directions are given to the Court what to do with his property after paying the decree-holder. I believe that those sections have been used very little: and if that be so, it is not surprising, for there is very small inducement to the debtor to avail himself of them.

"Now it seems to be the prevailing opinion that the judicial machinery in the Mofussil is hardly adapted to the working of any general and complete law of insolvency. At all events, such a law should be treated as a separate measure and not as part of this measure. But it will probably be better for the present, and be likely to pave the way to some more complete measure for the future, if we were now to make our law a little less rudimentary than it is at present, and at all events to supplement it where it now seems to be broken off in its natural course. We have therefore framed some sections for the following purposes—to provide that, when a man is tried and finds himself unable to pay his debts, he may apply to be declared insolvent; that the Court may declare the applicant an insolvent and appoint a receiver of his property; that it shall frame a schedule of creditors; that the insolvent's property shall be distributed rateably and without any priority amongst all his creditors; that when the insolvent gets his discharge, he shall be protected from imprisonment in respect of all the scheduled debts; and that his future property shall also be protected unless by order of the Court. There must be some provisions against a fraudulent use of the protection given by the Act. Those provisions should be partly preventive, by way of giving notice to creditors and enabling them to oppose the applicant; and partly punitive, by way of depriving him, whenever he is guilty of bad faith, of the protection which otherwise the Act would afford him.

"There is another subject of great importance, which, under other circumstances, it might have been very difficult to know how to deal with at this stage;

I mean the subject of second appeals. But, however much we may hope ultimately to introduce amendment on that subject, under the present circumstances, with which the Council is familiar, we have no option but to abstain from proposing any alterations.

"I have only now to state what I propose that the Committee shall do if appointed. Of course the Committee will be masters of the situation, and will deal with our draft exactly as they think right. But I do not myself intend to ask them to go through it clause by clause and word by word, as we go through Bills the next stage of which may be that they will pass into law. That is a process which would take many weeks of continuous sitting, and it would probably be found that the labour was premature, and to a great extent wasted, because it is certain that very numerous alterations will be required when criticisms come in. What I shall ask the Committee to do is to examine the proposed re-arrangement; to pay attention to the points in which we have been altering the draft of 1865; to adopt or reject them as they think right; to make such new suggestions as occur to them, and to decide whether the draft as they settle it shall be republished. If then it is republished, many months must, in a matter of such magnitude, elapse before we shall have received the necessary comments and criticisms, and we shall then, and not till then, be in the best position to give to the Bill that thorough examination in every detail which is necessary for the detection and avoidance of the errors that have been made in the drafting."

His Honour THE LIEUTENANT-GOVERNOR was not quite sure whether he understood correctly what had fallen from his hon'ble and learned friend regarding the judicial machinery in the Mofussil not being equal to the working of the law of insolvency. HIS HONOUR was not quite sure whether the hon'ble member meant that no cases of insolvency were decided in the Mofussil. In some parts of India, HIS HONOUR was certain they had an insolvency law, but as regards Bengal he ventured to remark that, if cases of insolvency arose in the Mofussil at a distance from Calcutta, the interests of the creditors required that, as far as possible, these cases should be decided on the spot by the authorities and Courts in the districts where they arose, and that the adjudication of such cases entirely in Calcutta was very much to be deprecated in the interests of the people. It might be that the Mofussil Courts were not strong enough, but that would be the most cogent argument for making them stronger on the earliest opportunity, so that they might be able to decide these important cases on the spot to the satisfaction of the people and the local interests concerned.

The Hon'ble MR. HOBHOUSE said the law did not at present provide that a person might become an insolvent in the Mofussil and his insolvency adjudicated on in Calcutta; the fact was that there was no insolvent law applicable to the dwellers in the Mofussil. Setting aside the recent law enacted for the Panjáb, it was only the dwellers in the Presidency Towns who had an insolvency law applicable to them. The alteration proposed did not tend to concentrate business anywhere. It was intended to give the Courts in the Mofussil somewhat larger powers and clearer directions than the present Code gave, so as to enable them to work out the remedy which apparently was contemplated by the framers of the Code of 1859.

The Motion was put and agreed to.

INLAND CUSTOMS BILL.

The Hon'ble MR. ELLIS presented the Report of the Select Committee on the Bill for regulating Inland Customs' Duties on Salt and Sugar, and for other purposes. He said that several alterations had been made of a verbal character, but not such as to require the republication of the Bill, and accordingly he proposed at the ensuing meeting to proceed to the next stage.

SIR JAMSETJEE JEEJEEBHOY'S LOAN BILL.

The Hon'ble MR. ELLIS also moved that the Bill to secure the repayment of a loan by the Government of India to Sir Jamsetjee Jeejeebhoy, Baronet, be taken into consideration. On a former occasion he had fully explained to the Council the object of the Bill and the mode by which it was proposed to effect that object. The Bill was not referred to a Select Committee and was now the same Bill as had been originally presented to the Council. No objection had been taken in the Council or outside of the Council to any of its provisions, and therefore he need not detain the Council with any further remarks.

The Motion was put and agreed to.

The Hon'ble MR. ELLIS then moved that the Bill be passed.

The Motion was put and agreed to.

MAJORITY BILL.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM presented the Report of the Select Committee on the Bill to establish a uniform age of majority of persons domiciled in British India.

BURMA FISHERIES BILL.

The Hon'ble MR. EDEN moved that the Report of the Select Committee on the Bill to regulate Fisheries in British Burma be taken into consideration. He had explained the other day that the Bill did not attempt to regulate in any way the precise details of the system in managing fisheries in British Burma, but simply declared the rights of the Government in respect of these fisheries, and enabled the Local Government, with the previous sanction of the Governor General in Council, to make such rules as might from time to time appear necessary for all purposes of assessment and collection of revenue from fisheries. The fisheries, as he had said, were all along, from the first occupation of the country, subject to the payment of revenue, but hitherto only under rules passed by the Executive Government. The Bill gave those rules, after sanction by the Governor General in Council, the force of law.

The only question ever raised was the question to which he had already alluded, namely, the right of the Government to raise a revenue from this source. He hoped the explanation given in the Select Committee to the hon'ble members who raised that objection, together with the explanations offered in Council on former occasions, had removed the doubts that existed as to that right. The right was declared in the preamble of the Bill, and he thought that any private rights, if they existed, were sufficiently protected by the Bill, that was to say, that all grants of land which happened to include fisheries already made, and all such grants which might hereafter be made, would not be interfered with by the rules laid down in the Bill. With the exception of this declaration of right, there was nothing in the Bill to which he need now call attention. The details of the system for managing and controlling the fisheries were not contained in the Bill, but were left to be regulated by rules.

The Hon'ble MR. DALYELL had, when this Bill was first introduced, stated his concurrence in certain doubts which had been thrown out by his hon'ble friend Mr. Sutherland as to whether the State did possess exclusive rights in all the Burmese fisheries, and had expressed an opinion that it was of somewhat doubtful expediency to subject to taxation an article which entered so largely into the food of the poorest classes, as did fish in British Burma. More than a year had since elapsed, the report of the Council's proceedings had been made public, and the Bill had been made generally known throughout the province to which it related. As no representations had been received from any private quarters, the Council might conclude, as the hon'ble mover of the Bill had told them, that no private rights would be interfered with,

and that the interests of the public would not be injuriously affected by the Bill. Much stress had been laid on this point by the Select Committee on the Bill, and although he had a strong opinion that some clause should be inserted saving private rights in some more specific manner than was done in the section to which his hon'ble friend had just alluded, he had been induced, on these grounds, and on the assurance of the hon'ble mover that no such rights now existed in the province, to affix his signature to the report recommending that the Bill be passed. Since the presentation of the Committee's report, however, his hon'ble friend had placed in his hands the whole of the correspondence which had passed in connection with the measure. He found from these papers that, although there was considerable difference of opinion as to whether certain rights in some fisheries were not conferred on certain individuals by the Native Government in former years, and as to whether any such rights were in existence at the period of the British accession, there was no doubt whatever that these rights were invariably exercised subject to the State's demand for revenue, and that the receipts from fisheries had always formed not a very inconsiderable item of revenue in British Burma both before and after the annexation. It was clear then that the Bill did not inaugurate a new taxation, as MR. DALYELL was at one time disposed to believe, but that it merely gave legal sanction to an existing impost. He used the word "impost" advisedly, because, after reading the correspondence, he was quite unable to concur with the hon'ble Mr. Bayley, who on the last occasion on which the Bill was discussed seemed to think that the only question raised by the Bill was a question of property and not of taxation. He could not believe that any private right had ever been put forward to the deep-sea fisheries, and if such right was ever asserted by the State, it must have been in the exercise of its power of taxation and not of its ordinary rights of property. He also found from these papers that the only public right affected would be the right to take fish for domestic consumption from the State fisheries. The balance of evidence on this point was, however, decidedly in favour of the view that this right was conferred for the first time in 1864, and then only as a privilege under the fishery-rules published by the Chief Commissioner. He could quite understand, as the hon'ble mover had told them, that such a privilege had led to constant quarrels, litigation and crime, and he believed that a wise discretion had been exercised in withdrawing this privilege in the new rules framed three years ago. The Bill merely legalized these new rules, and it was satisfactory to know that, whereas, under the old rules, numerous complaints were made against the settlements, under the new rules but few appeals had been received, and these had referred, not to the provisions of the rules, but to the breach of those provisions. Then, as a mea-

sure of conservation, the Bill would very much improve the fisheries, and he should be glad to see these sections of the Bill put in force throughout the whole of British India. At the same time he still thought that the provisions of the Bill were somewhat restrictive of the growth of private rights, and that any such restrictions were objectionable in a province which, as it was expressed by his hon'ble friend Mr. Sutherland, had a great commercial future before it. MR. DALYELL could not believe that persons would not hesitate to invest capital in land, if they were aware that under the law the Government, or the lessees of the Government fisheries, had a right of property in all tanks, lakes and rivers within the boundaries of their purchase, and of course, also, a right of way over such lands to exercise their right of property. Therefore he should have been glad to see some provision in the Bill to meet such cases as these, and, as he had already stated, to preserve any possible existing private rights. At the same time, although he believed that the powers taken were somewhat more arbitrary than was necessary, he was satisfied that they would be exercised with judgment and moderation by his hon'ble friend, with whom would rest the responsibility of carrying out the provisions of the Bill.

The Hon'ble MR. SUTHERLAND asked permission in one word to concur in what had fallen from the hon'ble Mr. Dalyell. When the hon'ble Mr. Hobhouse introduced the Bill, MR. SUTHERLAND ventured to take exception to the assertion in the preamble, namely, "that the exclusive right of fishing in British Burma by the custom of the country belongs to Government." He was bound to say, however, that he had nowhere seen that assertion disproved. He was therefore now ready to accept the preamble as correct, and he accordingly did not feel justified in offering any opposition to the Bill being passed.

With regard to the restrictions in the Bill, he certainly agreed with the hon'ble Mr. Dalyell, but he hoped that the rules which might be issued would be framed in a liberal spirit, and with due regard to existing private rights.

The Hon'ble MR. BAYLEY wished to add a few words in explanation, in regard to what had fallen from his hon'ble friend Mr. Dalyell; for although he did not think the point was one deserving particular attention at this stage of the Bill, he wished to put himself right with the Council as to what he had before said respecting the right of taxation. The question was a question of name and not of substance. Whatever name might be given it, there could be no question that any private person who had the property would get from the fishery at least the same amoun t of revenue as the Government

derived. The question was, not whether this impost should form part of the cost of production, but whether it should go into the hands of the Government or to private individuals.

As regards what his hon'ble friend Mr. Dalyell had said of deep-sea fisheries, MR. BAYLEY thought as a matter of fact it would be found that a great portion of these deep-sea fisheries were fisheries requiring the occupation of a portion of the fore-shore, and the proprietors of the fore-shore where the fishery was carried on could levy the same tax as the Government. He had no doubt that the owners of the land would require at least the same sum for this privilege as the Government where it was the proprietary. Therefore, as a matter of fact, it did not signify whether the impost was called a tax or revenue; it did not affect the consumers of the fish who had to pay it in some shape or other.

As regards the other provision of the Bill to which exception had been taken, it had been distinctly proved that, if there ever were some ancient grants of fisheries, they were resumed by the reigning dynasty whom we found in Burma; a few grants had possibly been made by that later dynasty, but this was doubtful, and at any rate all those grants were disused, and had become extinct by prescription since our occupation of the country some twenty years ago. As a matter of fact there were no existing rights except those conferred by grants of the British Government, which were expressly saved by the Bill. And as respects the future, the Government had the full option of making grants in any shape it liked, and of making grants of the fisheries either separately or with the land; whether or not the right to fisheries was included hereafter in a particular grant of land was a question for the grantee to see to when he got his grant.

The Hon'ble MR. HOBHOUSE said, as this Bill was in his charge in the early stages, and as before it went into Committee he had expressed some degree of sympathy with the doubts thrown out by his Hon'ble friends Mr. Dalyell and Mr. Sutherland, he wished now to express his entire concurrence with them in thinking that those doubts had been removed. The important part of the Bill was the preamble. If the rights asserted in the preamble belonged to the Crown, then all the rights and powers given to the Government might justly be taken; there was a basis of justice for the whole Bill, and the only remaining question was one of expediency—a question which it must be for the Local Government to decide from time to time as the law was found to work. He considered that the statement contained in the preamble had been

proved as satisfactorily as could be expected on such a subject by both positive and negative evidence. It was most useful that such doubts should have been expressed openly in Council, because the attention of those interested had by that means been called pointedly to the matter. The attention of the local officers had been called to the point, and they had with one accord expressed the opinion that the right to these fisheries belonged to the Crown. The attention also of private individuals had been called to the point and yet not a single person had come forward with any exception to the correctness of the statement in the preamble. MR. HOBHOUSE thought, therefore, that we might safely go forward with this Bill.

The Motion was put and agreed to.

The Hon'ble MR. EDEN also moved that the Bill as amended be passed.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM entirely concurred with the hon'ble Mr. Dalyell that it was always a difficult matter with regard to deep-sea fisheries to limit the exact boundaries of such fisheries, because the fishermen residing at the sea-port were in the habit of going out several miles into the sea for such purpose, where by means of large nets they caught several maunds of fish of all sizes. Therefore, as regards the catching of fish in deepsea waters and in large rivers, it was difficult for the local authorities and the officers of Government to investigate the rights of private individuals. No doubt the right of the Crown to levy taxation was one of the important rights which the Government must have. If the Council passed this Bill into law, he was sure, from the experience and judgment of his hon'ble friend Mr. Eden and from what had fallen from other hon'ble members, that every justice and consideration would always be shown to the private rights of individuals, and HIS HIGHNESS had no doubt that this Bill would prove effectual in every respect.

The Hon'ble MR. EDEN might venture to remark that the view of the Hon'ble Mr. Bayley as to the general existence of a practice of raising revenue by making demands on fishermen for the use of lands in the neighbourhood of fisheries was quite correct; the right was exercised by landlords and zamíndárs along the whole coast of India. He was in a position to state that it was extensively exercised by the zamíndárs in Bengal. Last year, when coasting along the shore, he went beyond the limits of his own jurisdiction to a portion of the territories under the control of his hon'ble friend Sir Richard Temple, and he heard complaints of extortionate taxes being levied by the zamíndárs in Chittagong upon sea-fisheries: he found that the practice was to levy a

heavy tax in the form of land-rent from persons repairing nets, hauling up boats, and curing fish. Many of the lessees of fisheries in British Burma occupied large pieces of land, and cured fish in such quantities as to supply the whole of Upper Burma, and a great deal of it also went into China, and they paid nothing for the right conferred, beyond the tax on their traps and nets. In Burma, where there were no zamíndárs, the State exercised the right which was recognized elsewhere as belonging to the owner of the land.

Further, as to the fears which had been expressed regarding the discouragement of investments in landed property in consequence of the declaration of the right of the Government to the fisheries in British Burma, he (MR. EDEN) would point out that in all grants of land already made by the Government, that right was distinctly reserved in the Bill, where it was provided that "nothing herein contained shall prejudice or derogate from any express grant of a right to fish heretofore made by the British Government." Consequently, when any person had taken such a grant, his right to fish would not be infringed; and in future a person in taking a grant of land would be in a position to make his own terms. If he desired also to have the right to the fisheries within his land, he could stipulate that his grant should include a grant of all the fisheries. The right to raise revenue from fisheries was not compulsory, but permissive, and it would be in the discretion of the officers of the Government to state that a grant should include the right to the fisheries contained in the land, or otherwise: there was nothing to prevent any person from acquiring the full benefit of all rights to the fisheries in his land.

The Motion was put and agreed to.

BURMA LAND REVENUE BILL.

The Hon'ble MR. EDEN introduced the Bill to declare the law relating to interests in land and to regulate the assessment and collection of land-revenue, capitation-tax and other taxes in British Burma, and moved that it be referred to a Select Committee with instructions to report in two months.

The Bill had now been prepared and submitted to the members of the Council, and it would be seen that there was nothing in it which laid down any new right, or altered in any way the rights of the people in regard to the land, with one slight exception to which he should presently refer. The only question which had arisen in preparing this revision of the land-revenue system was the right of the people to the soil. There was no question as to the real position of the cultivator in regard to his fixity of tenure. Everybody admitted that he had practically, after twelve years' occupation, a full and complete title

without any interference except as to the variation of his rent. But there was a difference of opinion as to what they should be called, whether proprietors, tenants, or occupiers. This difficulty had been got over by adopting a term which was neither the one nor the other, and calling such a cultivator a "landholder." The right given was that which every one agreed they possessed, and which it was desired to continue to them. Sections 6 and 7 of the Bill provided that any person who had been in possession of any culturable land for twelve years continuously became a landholder, and as a landholder obtained a complete right to the land, which he could sell or pass in succession to his heirs, subject to the rate of assessment on the land fixed from time to time.

The alteration to which he had alluded as having been made in the present system was stated in the following sections of the Bill, which related to the relinquishment of his land by a landholder. As MR. EDEN had explained the other day, great difficulty arose from persons leaving their lands and returning after long absence and claiming to be placed in fresh occupation to the exclusion of the temporary owner. Under the Bill as drawn, the right was curtailed so far, that within a certain period after the Act coming into force, any person desiring to leave his land with retention of his right to re-occupy the land, must go through a certain form and give notice of his wish to retain that right to come back to the land at a future time, which must not exceed twelve years from the date of relinquishment. That was the only alteration in the present system made in the Bill. The rest of the Bill was taken up with giving formal effect to the rules at present in force in British Burma. The Settlement Rules were, it would be seen, very simple. Provision was made for the grant of waste-lands and their exemption from revenue whilst they were being brought into cultivation. The procedure had been left in great measure to be determined by rules to be framed under the Act, but in so far as it was defined in the Bill, it gave effect to the procedure now in force, and kept it in as simple a form as it could possibly be.

With regard to the other taxes provided for in the Bill, none of them were new: they were all taxes which had been in force for many years, and were regulated under rules which had not had the full force of law. As the Bill was drawn it met all the requirements of the case, and would give satisfaction to the people and the officers entrusted with the collection of the revenue.

The Motion was put and agreed to.

The Hon'ble MR. EDEN moved that the Bill be published in the *British Burma Gazette* in English and in such other languages as the Chief Commissioner may direct.

The Motion was put and agreed to.

BURMA LABOUR CONTRACT BILL.

The Hon'ble MR. HOBHOUSE moved that the Hon'ble Messrs. Inglis and Eden be added to the Select Committee on the Bill to regulate the transport of Native labourers in British Burma, and their employment therein.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to consolidate and amend the law, relating to the Procedure of the Courts of Civil Judicature. The Hon'ble Messrs. Bayley, Inglis and Dalyell, His Highness the Mahárájá of Vizianagram the Hon'ble Sir Douglas Forsyth and the mover.

On the Bill to declare the law relating to interests in law and to regulate the assessment and collection of land-revenue, capitation-tax and other taxes in British Burma. The Hon'ble Messrs. Hobhouse and Bayley, the Hon'ble Sir W. Muir and the Hon'ble Sir Douglas Forsyth and the mover.

The Council adjourned to Tuesday, the 2nd March 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 23rd February 1875.

Office of Supdt. Govt. Printing.—No. 694 L. D.—26-2-75.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 2nd March 1875.

PRESENT :

His Excellency the Viceroy and Governor-General of India, G. M. S. I., *presiding.*

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble B. H. Ellis.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble John Inglis, C. S. I.

The Hon'ble R. A. Dalyell.

The Hon'ble H. H. Sutherland.

His Highness the Mahárájá of Vizianagram, K. C. S. I.

The Hon'ble J. R. Bullen Smith.

The Hon'ble Sir Douglas Forsyth, K. C. S. I.

HIGH COURTS CRIMINAL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE presented the final Report of the Select Committee on the Bill to regulate the Procedure of the High Courts in the exercise of their Original Criminal Jurisdiction.

PRESIDENCY TOWNS POLICE MAGISTRATES BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the presentation of the final Report of the Select Committee on the Bill to extend certain parts of the Code of Criminal Procedure to the Courts of the Police Magistrates in the Presidency Towns and to increase the jurisdiction of such Courts.

Leave was granted.

PORT-DUES BILL.

The Hon'ble MR. HOBHOUSE also presented the final Report of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-dues.

INLAND CUSTOMS BILL.

The Hon'ble MR. ELLIS moved that the Report of the Select Committee on the Bill for regulating Inland Customs-duties on Salt and Sugar, and for other purposes, be taken into consideration. The Bill was substantially in the same form in which it was when it was presented to the Council, and the objects intended in bringing in the Bill had been, he believed, attained by it in its present shape. He had stated on a previous occasion that one object of the Bill was the consolidation of the existing law. That that object had been pretty well attained would be seen by reference to the schedule of enactments either wholly or partially repealed; a large number of Acts would be entirely repealed, and sections of several other enactments would be dispensed with.

The Bill had been arranged in six chapters, the first of which was preliminary, and contained definitions, some of which were new, and others modified previous definitions for the greater clearness of the subsequent sections. The second chapter referred to the business proper of the inland customs-line: it defined what was there called the customs-zone, which was a zone of country not exceeding fifteen miles along any portion of the frontier referred to in the Bill. There was one rather important modification of the existing law in reference to this zone. The Bill as now framed gave power to the Governor General to extend the area of the customs-zone, so as to include any portion of a railway, canal or navigable river entering the zone, and brought under the same condition as the zone itself, such places in these railways, canals and navigable rivers as were places for loading and unloading dutiable goods into or from wagons or boats. The object was, not to increase the area of territory to be included in the customs jurisdiction, but to afford facilities to traders. It often happened that a railway-station where salt was loaded for despatch was outside the customs-zone. The salt was loaded for entry into the zone, and if there was not provision to enable the customs authorities to act at a place of loading outside the zone, the salt would have to break bulk in some place inside it. It would therefore be a great convenience to the traders to have a spot where the goods were loaded made a place where the customs-officers could act as within their own jurisdiction. This chapter explained the result of entering the zone, and showed how salt entering the zone was to be deemed to be imported, and sugar going out of the zone was to be deemed to be exported, and prescribed the several measures which the customs-officers could take under the rules to be framed by the Governor General in Council for regulating the collection of duties and the import and export of goods.

The third chapter related to the internal manufacture of salt and the manufacture and refinement of saltpetre. The latter was included only on account of the salt necessarily made in the course of the refinement of saltpetre. The Bill gave power to prohibit and to regulate by license the manufacture of salt and saltpetre, and prescribed certain rates of fees for licenses for such manufacture.

The fourth chapter dealt with fines and penalties: these penalties were chiefly based on the existing law. He might state that they were in no case enhanced; in some instances they were rendered in accord with similar clauses in the laws regarding excise.

The fifth chapter related to the powers of seizure, search and arrest. Here would be observed some additional restrictions, based on the provisions of the Criminal Procedure Code, in respect of searches in zanánás for property which had been stolen.

The sixth chapter contained merely some usual miscellaneous provisions.

MR. ELLIS thought that no further remarks on the details of the Bill were required. The measure, as had been previously stated, was a consolidation of the existing law, and an attempt to reduce to a compact and convenient form the existing enactments on the subject. He hoped that the Bill would not be a long-lived one, and that it would not remain many years on the Statute-book; he hoped rather that, on an early day, the Government might see its way to abolish the customs-line altogether, and introduce a system which would be a permanent one, and under which all inland trade would be entirely freed from the inconveniences to which it was now necessarily subjected.

The Motion was put and agreed to.

The Hon'ble MR. ELLIS also moved that the Bill as amended be passed.

His Excellency THE PRESIDENT said :—"Before this Bill passes, I wish to say that I heartily agree with the wish that my friend Mr. Ellis has expressed, that this Bill may not remain long upon our Statute-book. It is the opinion of the Government of India that, in the first place, the present export-duty upon sugar manufactured in British territories, when it crosses the customs-line, is one of the worst of our present taxes, and one of the first which the

Government would desire to take off. Secondly, we think that the customs-line itself is a great evil. It impedes trade, and it can hardly be supposed that the management of a long line of that kind—although I believe that the rules have been carried out with every care to prevent oppression of the people by the subordinate officials employed—can possibly be carried on without considerable pressure and inconvenience to those who are in the habit of crossing and recrossing the line. It is therefore, in the opinion of Government, most desirable that free trade should be established between the States which are now divided by the customs-line. We have been able already to remove the southern customs-line; but all those who have paid attention to the subject know that the northern customs-line cannot be removed until arrangements are made with the Native States of Rájputána and Central India, where salt is produced. For, if the line was removed without such precautions, salt would be introduced into British territory without having paid the tax, and our salt-revenue, which in my opinion is one of the soundest sources of revenue in India, would be seriously affected. I am happy to inform Members of Council that I see hopes—indeed I may say that I anticipate with confidence—that arrangements may be made which will enable us to overcome this difficulty. One of the most distinguished of the Princes of India—the Mahárájá Holkár—is now on a visit to Calcutta. I have had the pleasure of some conversation with His Highness upon this subject, and I am happy to be able to say that, so far as the State of Indore is concerned, I believe we shall be able to make a satisfactory arrangement. Therefore, I will go somewhat further than my hon'ble friend, Mr. Ellis, and say, not only that I wish, but that I anticipate, that before many years have passed, this Bill will be removed from the Statute-book."

The Motion was put and agreed to.

MAJORITY BILL.

His Highness the MAHÁRÁJÁ OF VIZIANAGRAM moved that the Report of the Select Committee on the Bill to establish a uniform age of majority of persons domiciled in British India be taken into consideration, and said:—

"My Lord:—It may be remembered by the Council that, in the opinions received on the subject of this Bill from various parts of British India, there was a wish expressed by many persons of influence and experience that the period of nonage should be generally extended to the end of the twenty-first year. This matter has received the serious consideration of the Select Committee, and they

have recommended that the third section of the draft Bill, as it last stood, be amended as follows:—

"'3. Subject as aforesaid, every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards, shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865), or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before:

"'Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.'

"The reasons which have induced the Select Committee not to extend the period of nonage beyond the time originally proposed, except in the case of wards of Court, are substantially the same as those which were given by my friend, the hon'ble Mr. Hobhouse, in addressing the Council on the occasion of my having the honour to introduce this Bill. Although many have expressed themselves in favour of a uniform age of majority on the completion of the twenty-first year being established for all persons, I have considered it right to be guided by the opinion of the hon'ble members of the Select Committee, who, with far larger capacity and means of forming a judgment on the point than any to which I can pretend, have deemed it unadvisable to at once extend the period of minority so largely as would be the case for many classes were it raised to twenty-one generally. I confess that, so far as I can gather from the opinions which have been received on this matter from leading Natives of the country, and from what I have been able personally to ascertain from those of my countrymen who have favoured me with their views on the subject, I do not think that any substantial dissatisfaction would have been provoked by the measure if it had enacted that the age of majority should be twenty-one for all persons. On the contrary, I am inclined to believe that such an enactment would have met with the approval of the great body of intelligent and thoughtful persons throughout the country. I did not myself, in the Bill as first drawn, venture to propose a uniform age of majority at twenty-one, inasmuch as, at that time, I had not the advantage of knowing the opinions which have since been so influentially expressed on this point, and as all precedent of prior legislation in this country on the matter had put the age of majority at eighteen. Since the Bill was published, there has, however, as is known to the Council, and as I have already stated, been a remarkable expression of opinion that advantage should be taken of this opportunity to raise the age at which majority is attained to at least twenty, if not twenty-one,

years. My own experience fully coincides with that of those who deny that there is any such general precocity of judgment in the youth of this country as to make it expedient that they should be considered to be *sui juris* at an age much earlier than that recognized by any of the States of Europe in the cases of their own subjects or of residents in their home territories. In the case of minors who are wards of Court (or under the jurisdiction of the Court of Wards) the Select Committee is of opinion that it is undesirable to put them in the position of being able to deal in their own right with their property until they have completed the age of twenty-one years. It is perhaps difficult to see why the immaturity which is thus deemed a fitting reason to prolong the period of their legal incapacity to act, should be held to be peculiar to them, and on what grounds it can be urged that other persons are, as a body, fit to be trusted with the disposition or management of their property at an age three years earlier. The education of the minors thus excepted from the general rule of this Bill is looked after by Government; and so far as education and training go, it might be supposed that they would be more fitted to undertake the responsibilities of legal manhood at an earlier age than the body of the youth of the country. But as I have said, it is considered by the other members of the Select Committee that this question of the age at which majority shall be deemed to be attained should be dealt with in the manner proposed in the amended Bill, and to their greater experience and knowledge I willingly defer.

"The only other substantial alteration which has been made in the Bill by the Select Committee, is that in section 4 of the Bill as it now stands, as to the manner in which the age of majority is to be computed. The section as originally framed was in accordance with the English law on the point, which law proceeds on the principle that no notice is to be taken of fractions of a day. The amended section introduces a more obvious and simple mode of calculation, and will probably be approved by the Council.

"In conclusion, I have to express the deep obligations under which I am to my friend the Hon'ble Mr. Hobhouse, the hon'ble members of the Council, and to Mr. Whitley Stokes, for the great and invaluable assistance they have so kindly afforded me in the various stages through which this Bill has passed. It may truly be said that the Bill as it now stands is their Bill; and I cannot adequately express my sense of gratitude for the readiness and kindness with which they have, on every occasion, helped me in this matter with their invaluable advice. To the members of the Select Committee and to this Council, I, with due respect, offer my heartfelt thanks for the kind reception

given to this Bill, and for the kind manner in which they have given their time to put this Bill on a sound basis, and for the sympathy, generosity, and support with which the members of this Council have befriended and encouraged me in the task I ventured to undertake. Without such support I could not have hoped to have brought the Bill to its present stage."

The Hon'ble MR. DALYELL said that, whatever view might be taken of the provisions of this Bill, he was sure that it must be a satisfaction to every member present that their hon'ble friend the Mahárájá of Vizianagram should have set so good an example in being the first of his countrymen to bring into this Council a measure of legislation, and that he should have selected a subject the importance of which his intimate knowledge of the wants of all classes of the people should have so well fitted him to understand, and which his experience as a member of this Council had enabled him to put into so proper a form. As representing the Presidency to which His Highness belonged, perhaps MR. DALYELL might be permitted to remind him that his proceedings here were watched by a large circle of friends, both European and Native, in Madras, and by not a few English friends, of older date, who, though no longer in this country, still retained a lively recollection of their agreeable relations with him, both official and private, in the District of Vizagapatam and other places ; and MR. DALYELL was confident he only expressed the opinion of all of them when he said that no incident in his Highness's long career, marked throughout by many acts of usefulness and benevolence, was more to his credit than the attitude he had assumed with regard to this Bill. His anxiety to transfer the conduct of the Bill to the Hon'ble Mr. Hobhouse, the Law Member of the Government, in accordance with what he supposed, MR. DALYELL believed incorrectly, to have been a suggestion of the Government of the North-Western Provinces, was as honourable to himself as were his subsequent endeavours so to frame the measure as to make it harmonize even with the prejudices of his fellow-subjects; and MR. DALYELL desired cordially to congratulate his hon'ble friend on having so successfully brought the Bill to its present stage. He trusted also that His Highness would have the satisfaction to see it passed into law to-day, and would be encouraged to proceed further in the path of reform, and, with the permission of His Excellency the President, to take up other subjects which were equally important, and in regard to which the law was in an equally uncertain condition. He might mention, for instance, the law of Adoption, which he was informed at present was to a large extent based upon decisions of British judges, rather than governed, as it should be, by the writings of the old Native authorities.

As to the Bill itself, he quite thought that an enactment of some sort should be passed to determine the age at which persons should be able to enter into legal obligations; and though he should have been glad to see that age extended to twenty-one in accordance with the opinion of a large number of persons who had addressed the Council on the subject, still the fixing it at the age of eighteen, with the provision that the age should be raised to twenty-one in most of the cases in which inheritance to landed property was involved, would be an immense improvement on the present state of affairs, and he had therefore great pleasure in supporting the Bill.

His Honour THE LIEUTENANT GOVERNOR desired to say just one or two words to explain why he, for one, had special satisfaction in voting for this Bill. The class described in section 3 (namely, the minors under the jurisdiction of the Courts of Wards) was a very numerous and important class in Bengal, he believed more so than in many other Provinces in India. Very large estates were constantly being brought under the management of the Court of Wards, and they were managed greatly to the advantage of the ward and his family, and to the permanent advantage of the estates which came under their management. When it was necessary to make over those large estates and such very important interests to young Natives just at the age of eighteen, it was impossible not to feel anxiety for the ward and the estate. This anxiety would now be very much decreased by the prolongation of the period of minority to the completion of the twenty-first year. And further it was very satisfactory of course that this Bill should be introduced, not by any European colleague, but by a Native Member of the Council, who deservedly held so high a position in the estimation of his countrymen and whose authority would carry such weight as the Mahárájá of Vizianagram.

The Hon'ble SIR WILLIAM MUIR wished merely to make an observation in reference to the statement of his hon'ble friend, Mr. Dalyell, as to the supposed wish of the Government of the North-Western Provinces, that the charge of this Bill should have been transferred to the Hon'ble Mr. Hobhouse. The surmise must have been based on a misunderstanding; for he could say that it had given him sincere pleasure to see the Mahárájá taking so personal and active an interest in the work of legislation. During his (SIR WILLIAM MUIR'S) administration of the North-Western Provinces, he had had many opportunities, not only for expressing his thanks to the Mahárájá for his munificent liberality in the promotion of useful and benevolent projects, but also of observing the deep and intelligent interest taken by His Highness in the

welfare and social elevation of his fellow-countrymen. No person, therefore, could be better qualified than he was for the task; and SIR WILLIAM MUIR cordially concurred in the hope that His Highness might go still further and prepare projects of law on other subjects which he was so well fitted to deal with.

As regarded the Bill itself, now that questions of marriage, adoption and religious customs were excluded, SIR WILLIAM MUIR had no objection to its passing into law.

The Hon'ble MR. HOBHOUSE said:—"Before this matter is disposed of, I wish to make a few observations in further explanation of the precise changes in this Bill proposed by the Select Committee, and of the broader changes which will be effected in the law if the Bill is carried in its present shape. The present law may be thus roughly stated, not accurately, but with enough accuracy for the present purpose. Hindús attain their majority, some at fifteen, and some at sixteen; Muhammadans at fifteen or the age of puberty, whichever happens soonest. If however a young Hindú or Muhammadan is under the tutelage of the Court of Wards or of any other Court, his nonage is prolonged until he completes his eighteenth year. European British subjects, whether having an Indian domicile or not, attain majority for general purposes when they complete their twenty-first year. But with respect to property taken by way of succession, all the communities to whom the Succession Act of 1865 applies attain majority on the completion of their eighteenth year.

"As the Bill was introduced into this Council, it aimed principally at the removal of these diversities of practice, and at the introduction of uniformity, as both its title and its preamble showed; and it proposed for all British Indian subjects alike, that the age of eighteen should, for general purposes, be the age of majority. But on the discussion which followed the introduction of the Bill, our late colleague, the Rájá Ramánáth Tagore, raised the question whether the age of eighteen was not still too tender an age, and stated his own opinion that nonage should be prolonged till twenty-one; and it was agreed that the question ought to be carefully considered in Committee. In point of fact the Committee found that, after the introduction of the Bill, there was only one serious subject of controversy, and that was whether the age of majority should be fixed at eighteen or at some later age. We were recommended in a great number of influential quarters to postpone the age to twenty-one, and were referred to many cases in which injury had occurred to young men by reason of their becoming masters of their property at

too early an age. So it happened that, when we came to discuss these papers, the object of uniformity seemed to be less important than the object of framing a law suitable for the needs of Indian society. And we found that, if we prolonged the nonage of those who were wards of Court, though we should not altogether follow the recommendations of those who advocated the age of twenty-one, yet we should substantially satisfy their reasons and meet the cases of mischief which they adduced; while, at the same time, we should avoid so large a change as would be caused by altering the age from that of fifteen years, or less, to that of twenty-one.

"The broad result is that, setting apart the cases of successions and of European British subjects, we have provided that those who are now minors up to eighteen shall remain so up to twenty-one, and that others shall attain their majority at eighteen.

"It is true that, in shaping the measure thus, we are not going so far as the greater number of those interested in the matter would have us go. My hon'ble friend the Lieutenant-Governor of Bengal is an eminent instance of those who wish that the age of twenty-one should be prescribed for the whole community. The Government of Madras wish for the same thing, and so do a great many of the local authorities in that Presidency. Such Native gentlemen as the late Justice Dwárkanáth Mitra, and the members of the British Indian Association have advised us that eighteen is decidedly too low an age. Similar opinions prevail extensively elsewhere. I do not suppose that I am betraying any confidence when I say that such opinions were well represented in our Committee. In particular, Rájá Ramánáth Tagore (who, I am sorry to say, was prevented by illness from joining us personally) wrote a letter strongly urging us to raise the general age to twenty-one, and though he quite approves of the change we have actually made, so far as it goes, yet he would have been better satisfied if we had gone the whole way with him. My hon'ble friend, the Maháráját of Vizianagram, has just intimated to us in no obscure terms what his own opinion is. On the whole, however, we, or the greater number of us, came to the conclusion that it was better to require the age of twenty-one only of those who were wards of some Court. Our feeling is, I think, exactly expressed in a letter from the Government of the North-Western Provinces. It is there said:—

"'There has been a general feeling that if possible it would be better to make twenty-one the limit of minority. It seems clear to His Honour, however, that it would not be advisable to make so great a change all at once.'

"There is one consideration which must always be borne in mind in discussing this subject, and that is, that such a law is very rarely called into action

except in the case of the richer classes. I do not indeed doubt but that, taking very long periods of time, a law fixing the term of nonage has a tendency to modify social habits and ideas according to the age at which that term is fixed. But to the great bulk of mankind in any country whatever, the attainment of legal majority is a matter of no particular moment. All the ordinary transactions of life are discharged according to the circumstances of each individual, whether he is legally *sui juris* or not. Therefore, on the mass of the community, such a law as this works very gradually and quite insensibly. It is amongst the class that possesses a substantial amount of property—a class that in every country must be small in numbers, though of great social importance—that such a law works immediately and visibly. As between father and son, as between guardian and ward, as between young heirs and the temptations that assail their youth, the change we propose is calculated to be directly operative. But here it seems to me that we walk on thoroughly safe ground. We are dealing with a class whose nonage, if their fathers are not living, is already prolonged beyond that of their neighbours, or liable to be so prolonged by a simple application to a Court of law. We are dealing with cases in which there will nearly always be property to be protected, and in which we know there is a responsible guardian to look after the interests of the ward. In these cases the change is not so great, and it is accompanied by the best guarantees that it will work smoothly and beneficially for those whom it affects. In the other cases, where there is no property, or where there is no guardian, we are content to raise the standard of age to that which is now appointed for wards, to efface most of the artificial distinctions that have sprung up between those who are entirely under the same law of Nature, and to say that, in the eye of the law, the Indian youth, whether he be a Hindú or a Muhammadan or of any other religion, shall be a minor until he has attained the age of eighteen years at least.

"If we may trust reasoning on general principles; if we may trust the experience of other countries; if we may trust the opinions we have received from a great variety of quarters in this country, we are proposing a beneficial change in the law; and I shall be surprised and disappointed if those who may now think we had better not interfere with such matters, do not, after a little time has passed, agree that we owe thanks to my hon'ble friend the Mahárájá of Vizianagram for bringing this subject before the legislature".

The Motion was put and agreed to.

His Highness the MAHÁRÁJÁ OF VIZIANAGRAM moved that the Bill as amended be passed.

His Excellency THE PRESIDENT said:—"I wish to add one word to the observations which have been made with regard to this Bill, and to join with my colleagues in this Council in thanking the Mahárájá of Vizianagram for the pains which he has taken in the preparation and introduction of the Bill, and for the manner in which he has met the suggestions and opinions of those who, although they agreed in the general objects of the Bill, had doubts as to some of the details. I agree with those who think that, in a matter of this kind, the Council should be very cautious, and therefore I believe the course taken by the Select Committee in fixing eighteen as the ordinary age for majority was wise, although at the same time there was much to be said in favour of raising the age to twenty-one.

"I am glad to see, from the second clause of the Bill, that it has been carefully laid down that the alteration of the law will not interfere with matters of marriage, dower, divorce and adoption, or affect the religion or religious rights and usages of any class of Her Majesty's subjects.

"The Bill has been very deliberately considered, and may, I believe, safely be passed into law by the Council."

The Motion was put and agreed to.

The Council adjourned to Tuesday, the 9th March 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 2nd March 1875.

Office Supdt. Govt. Printing.—No. 720 L D.—5-3-75.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 *Vic., cap.* 67.

The Council met at Government House on Tuesday, the 9th March 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble John Inglis, C. S. I.
The Hon'ble R. A. Dalyell.
His Highness the Mahárájá of Vizianagram, K. C. S. I.
The Hon'ble J. R. Bullen Smith.
The Hon'ble Sir Douglas Forsyth, K. C. S. I.

HIGH COURTS CRIMINAL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE moved that the Reports of the Select Committee on the Bill to regulate the Procedure of the High Courts in the exercise of their Original Criminal Jurisdiction be taken into consideration. He said:—"This is a Bill which in one shape or another has been a long time before the Council, for leave to introduce it was obtained by my friend, Mr. Stephen, in the year 1872. There was considerable delay in introducing it, because, almost simultaneously with its first mention here, the Local Governments were consulted about it, and we could not prudently or properly introduce the Bill until their answers were received. The subject-matter of the measure was a larger one than it now is, because it embraced not only the procedure of the High Courts but that of the Police Courts in Presidency Towns, and it required a careful consideration of the whole Criminal Procedure Code before an opinion of any value could be given on the question what sections we should apply to the High Courts, and what to the Police Courts. At first sight it seemed proper to combine in one Bill two branches of Criminal Procedure, each relating to the Presidency Towns, and the first draft of the Bill,

which I introduced in the month of July 1873, combined the two accordingly. That however was a mistake, as we found when we came to work the Bill in Committee. The two portions of the Bill are subject to quite different considerations; they involved communication with different sets of officers; they promised to travel at different paces; and have ultimately been subjected to very different treatment. Accordingly we determined to cut our Bill in two, and to let each half take its own independent course. That was done in the month of April 1874, when we presented our first report.

"Up to that time we had framed our Bill on the principle of applying to the High Courts certain parts of the Criminal Procedure Code in block, and by reference to the chapters and sections of that Code. We were however very much urged, especially by the High Courts of Bombay and Calcutta, not to do the work in that fashion, but to set forth *in extenso* all the sections of the Code which we proposed to apply to the High Courts, making the requisite alterations in the text of each section. On further examination of the subject we thought that the learned Judges were right, and that we should avoid a good many ambiguities and errors by taking the trouble to set out the sections at length. Accordingly we made that alteration, and the Bill was published in its new form about two months ago.

"So much for the shape which the Bill has now assumed. As regards its substance, the Council knows that our objects in introducing it were partly to consolidate the law relating to the Criminal Procedure of the High Courts, partly to bring it more into accord with the procedure established for the Mofussil, and in some respects to provide simple processes instead of complicated ones. The present practice of the High Courts is regulated partly by several Indian and English enactments, which we propose to repeal and consolidate, and partly by the rules of English common law imported into India by the first Chartered Courts. The Select Committee who sat upon the Criminal Procedure Code reported that the Mofussil practice should, so far as possible, be applied to the High Courts, and the Bill is principally devoted to that operation.

"After some preliminary sections we commence with the commitment of the accused, when the High Court first gets cognizance of the case, and detail the procedure up to the time when a plea of guilty or not guilty is put in. That occupies Chapters III and IV of the Bill, and brings us to the subject of juries, to which Chapter V of the Bill is devoted.

"This part of the procedure is now regulated by special Acts for the High Courts: and in the first instance we contemplated little more than a consolidation of the High Court law about juries. But we were strongly advised by some very high authorities to introduce so much of the Mofussil practice as allows of a less number of jurors than twelve, and so much as dispenses with the necessity for an unanimous verdict. And believing that this practice of the Mofussil was more suitable to the circumstances of India, even in the Presidency Towns, than the English practice, we made some important alterations in that direction in the month of April last year. I then presented our report, and took the opportunity of explaining to the Council the changes that had been made, saying that I anticipated a great deal of controversy and criticism upon them. Events however have quite belied my anticipations, and have proved that men's minds were ripe for the proposed change. Though the proposal has been before the public for nearly a twelvemonth, there has been exceedingly little controversy upon it. The learned Judges of the Bombay High Court are or were not agreed among themselves on the question of unanimity, but that disagreement arose before our alteration was proposed, and was consequent on a proposal spontaneously made by one of their own body to abolish the rule of unanimity. They have said nothing about the reduction of numbers, and nothing further about the rule of unanimity, since the publication of our altered Bill. Possibly they have felt what I have always felt with respect to this matter, that as Judges cannot always attain unanimity among themselves, even after weeks or months of consideration, it is hardly reasonable to expect it all of a sudden of twelve men caught at random and brought together for the first time to consider a wholly new subject. However, let the reason be what it may, the fact is that since the publication of the Bill in April 1874, we have received no objection to the principle of the alteration except from the British Indian Association, who, to use their own words, 'submit that the merits of the jury-system lies in the unanimous verdict of twelve good men and true.' And they think that the liberty of the subject is better guarded by requiring unanimity. An obvious answer to such observations is that the unanimity which is thus talked of does not really exist. Which of us ever knew twelve men agree on any matter which was capable of being disputed with even a shadow of plausibility, or indeed, for the matter of that, without any such shadow? We know that such a thing never happens; and that it is a mere pretence to talk of its happening in the jury-box. The merit of the jury-system, considered as a mode of administering sound justice (for its political and social merits are not under discussion here), has always seemed to me to be that the view which recommends itself to a decided majority of reasonable and impartial people

generally prevails. But that advantage is best secured by requiring a decided majority coupled with the agreement of the Judge. It is not secured by requiring an outward show of unanimity. On the contrary, to require that is to put a dangerous power into the hands of any crotchety wrong-headed person who may happen to be upon the jury.

"But I feel relieved from the necessity of arguing this point with any degree of elaboration, because of the great preponderance of authorities in this country in favour of the principle of the change we have proposed. The High Courts of Calcutta, Madras and the North-Western Provinces, and the Chief Court of the Panjáb, all accept it favourably. The Madras Government was the first to urge it on us. The Governments of Bombay and of the Panjáb both express approval of it. The late Lieutenant-Governor of Bengal, who drew his experience of the working of juries from England as well as from India, gave his emphatic approval of it at this table.

"In fact, with the exception I have mentioned, there has been no controversy on anything but the details of the alterations. What we propose is that a jury shall consist of nine persons, the maximum number required for the Mofussil; that when they disagree, a majority of two-thirds shall suffice for a verdict if the Judge agrees with them; but that, if there is no such majority, or if the Judge disagrees, there shall be no verdict, and the jury must be discharged, as it is now in case of disagreement. Well, there are different opinions about the number of the jury, and there are different opinions as to the proportion which should constitute a decisive majority, and as to the exact position which the Judge should occupy. Those opinions conflict with one another: some would urge us in one direction, and some in the contrary one. The result is that on the whole we thought it better to make no alteration in what we proposed by the draft published in April 1874. After all, rules on this subject must be arbitrary: there cannot be any very close argument about them; we can only guess what rules are likely to work most smoothly in practice: we found that we had chosen a middle path between the limits of opinion, and thought that that path would be the safest to continue in.

"Passing from the subject of juries, the Bill goes on to regulate the procedure at the trial and a number of points connected with the evidence: then the Judge's charge, the verdict and the sentence. That takes us to the end of Chapter X of the Bill, and completes the ordinary procedure which is wanted for all trials. Then come some chapters relating to incidents of an exceptional character; one to Previous Convictions and Acquittals; one to Lunatics; one to Prosecutions for offences against the State and affecting public servants; and

two to Bail and Security for keeping the peace. Finally there comes a chapter of Miscellaneous matters, some of which are of considerable importance. In section 146 we affirm the right of the Advocate General to intervene on behalf of the Crown to stop any prosecution at any stage of the case prior to the verdict. It is very important always to bear in mind a principle which underlies all criminal proceedings, but which our position in India sometimes tends to conceal: the principle that a criminal suit is not a mere question between the person injured by the crime and the accused, but that the public have an interest, and the greatest interest, in it, and that the Crown is the representative of the public, and is the true plaintiff in every criminal suit, and has dominion over it throughout. That principle we affirm and apply in this section.

"Then section 147 enables the High Courts in the Presidency Towns to draw into their own hands the trial of any criminal case within the limits of their ordinary original jurisdiction; and section 148 enables them to order the attendance before themselves of prisoners in all proper cases. These two sections are intended to take the place of the more cumbrous proceedings by writs of *certiorari* and *habeas corpus*. We have directed the Courts to make rules for the proceedings by way of *habeas corpus*, and I believe it will be found that the procedure will be simpler and less technical than it used to be.

"I have now explained the general scheme of the Bill."

His Excellency THE PRESIDENT said:—"This Bill is, as my hon'ble friend, Mr. Hobhouse, has rightly said, a Bill of very considerable importance, and I am sure that the Council will agree with me in feeling that we are much indebted to Mr. Hobhouse for the great care and attention which he has given not only to this Bill, but also to other complicated and important Bills which have come before us during the course of the year. Opinions upon the provisions of this Bill have been carefully collected from all parts of India, and although the Bill has been accepted by this Council without any lengthened discussion, full explanations have been given from time to time by my hon'ble friend Mr. Hobhouse, and the Bill has received the most careful consideration in Select Committee.

"The papers that have been circulated to Members of Council show that it may now safely be passed into law.

"I make these observations for the purpose of stating that none of the provisions of this Bill have escaped attention, and that they have been most

carefully and fully considered at the different stages of its progress through the Council."

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

PORT-DUES BILL.

The Hon'ble MR. HOBHOUSE moved that the Reports of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-dues be taken into consideration. He said:—"This is a Bill which I obtained leave to introduce just a twelvemonth ago for the following objects:

"*First*, it was found that the legal powers of the Port-authorities, which extend partly over ports proper, and partly over the channels leading to ports, were not sufficiently extended over the latter area, and the Government had not sufficient control over the traffic in those channels.

"*Secondly*, it was desirable to extend to other parts of India arrangements which have been for some time at work in Calcutta, for providing medical attendance for sick sailors and paying for it by a rate on the shipping in the ports.

"*Thirdly*, it was desired to extend to other parts of India certain powers for the arrest and detention of deserters from ships—powers which are already in force in the Presidency Towns.

"*Fourthly*, it was found that the law was scattered over a great many enactments, there being altogether no less than twenty-six relating to the subject These we undertook to consolidate, and we proposed to set forth in a single table the tolls and dues leviable in the various ports of British India, and to bring into one enactment all the existing provisions on the subject.

"*Fifthly*, inasmuch as many of these enactments were passed for single ports, we found many useful provisions in force in one place and not in another. For instance, in Calcutta there are some useful provisions respecting fires and combustible materials, which do not exist for other places. No doubt for each place laws were passed according as events suggested them in that particular place; so that there were a considerable number of local powers and

regulations besides those I have specifically mentioned which in the process of consolidation we found not to be due to any local peculiarity, but to bear a general character, and to be fitly extendible to all ports. That amount of extension we proposed also to perform.

"When I introduced the Bill, I explained to the Council how it aimed at these several objects, and I may say now that, though it has undergone numerous alterations of small details, as was to be expected and as our reports fully explain, it remains substantially unaltered as regards the five objects I have mentioned. There are however one or two other points to which I ought to call the attention of the Council before proceeding to the consideration of the reports.

"One point is that we have introduced a definition of the expression 'high-water-mark.' The present law says that the Executive may define the limits of a port, and that such limits shall extend up to high-water-mark, but it says no more. Now the expression 'high-water-mark' contains two elements of uncertainty. The principle on which it is to be ascertained may be disputed; and again, when the principle is settled, it may be disputed what is the actual point of space which high-water actually reaches. Of course we cannot help the second of these difficulties: we cannot measure the ground in this Council. But the first difficulty we can help, and we have done so by saying that high-water-mark means the point reached by ordinary spring tides. The principle on which we have gone is this. The object of a Ports Act is that control may be exercised on behalf of the public over the space ordinarily used for the purposes of a port. When then we find that ground is frequently, regularly and according to the ordinary operations of Nature, covered with water, it is impossible to say that such ground does not fall within the natural limits of the port, or that it does not require the same control as other parts of the port. If a piece of ground is covered with the tide regularly even only once a month, it is used, or may be used, regularly by those who frequent the port: the circumstance that it may not be so used at neap tides does not prevent its being an integral part of the natural port, and any arrangements which left it out would be defective. We have therefore taken no account of neap tides; neither have we taken account of extraordinary springs or floods, such as may overflow the adjoining land once in a way; but have taken the flood-water of ordinary springs as the fairest and most probable interpretation of the expression 'high-water-mark' for the purposes of such an Act as a Ports Act.

"Some gentlemen indeed think that we ought to have struck an average between spring and neap tides; but that seems to us not to answer the purposes of a Ports Act, because it leaves the public without sufficient protection. And if the fact be that in our interpretation we have put too extensive a meaning on the expression 'high-water-mark', the persons to complain would be those who claim to be the owners of the adjoining shore. Now, as I shall show presently, the riparian owners of Calcutta have not gone to sleep over this Bill, but are quite alive to their own interests; and yet on this particular point of the definition they have raised no objection, though it was on the 15th of December last that I mentioned the matter in Council, and the Bill containing our interpretation was published immediately afterwards. I presume that they feel that the definition is only a reasonable one, and I hope that the Council will be of that opinion. After all the point cannot be one of very much practical importance, otherwise it would before now have been the subject of litigation, which I cannot find that it ever has been.

"Now I mentioned that the riparian owners took a lively interest in this Bill, and the reason is that they are engaged in a controversy with the Port Commissioners, or the Bengal Government, or both, respecting some rights claimed by them over the foreshore down to low-water-mark. So they have addressed us on paper, and have also had the kindness to meet us in conference, and have urged that the new Bill ought to contain something to place them in some more favourable position by recognizing the fact of their claims, and at all events the possible validity of them, which they say is denied by their opponents. Now there may be claims to private property of such a kind and on such a scale as to justify the legislature in interfering to settle them. But these Calcutta controversies did not appear to us to be of such a character. They appear to possess the characteristics of ordinary lawsuits, and we could not see why we should be called on to interfere on one side or on the other. Indeed I do not suppose that the riparian owners would be pleased if we interfered on the side of the public; and neither the Port Commissioners nor the Bengal Government have asked us to do so. Well then our position is that, whatever rights the public have against claims of private property, and whatever protection private property has received against the claims of the public, are to be found in the existing Act of 1855, and have been thereby ascertained and regulated for twenty years. It may indeed be for more than twenty years, but we have not looked behind the Act of 1855. At all events for twenty years the public have had the rights which the existing law gives them, and we could find no reason why those rights should now be lessened. If we were to attempt such a thing, I know what would happen: we should find ourselves

engaged in a lively controversy with the Port Commissioners and the Government of Bengal, on whom is thrown the duty of protecting the public interests; and there would immediately be a motion by my hon'ble friend the Lieutenant-Governor, or by my hon'ble friend Mr. Bullen Smith, or by both, to reduce the Bill back again into an expression of the existing law. So we determined to keep the Bill confined to an expression of the existing law. I will just read to the Council what the provisions of the law are on this subject. The Executive has power to define the limits of ports and to alter those limits from time to time. Then section 4 of Act XXII of 1855 enacts that—

"'Every declaration by which any port, navigable river, or channel shall be made subject to this Act, shall define the limits of such port, navigable river, or channel; and such limits shall extend always up to high-water-mark, and may include any piers, jetties, landing-places, wharfs, quays, docks, and other works made for any other purposes mentioned in the preamble of this Act, whether within or without the line of high-water-mark, and (subject to any rights of private property therein) any portion of the shore or bank within fifty yards of high-water-mark.'

and in a subsequent part of the Act, section 60, it is enacted that—

"'Nothing in this Act shall extend * * * to deprive any person of any right of property or other private right, except as hereinbefore expressly provided' * * *.

"Those are the powers vested in the Executive, and those are the protections thrown around private rights for the last twenty years or more. On this point we only purposed to re-enact the existing law, with such improvements of detail as occur on every occasion of re-enactment, and our duty was to see that the new Act would be substantially neither more nor less than the old. The Bill has been carefully and repeatedly examined for this purpose, and I believe that whatever doubts they entertained at first, the gentlemen who have communicated with us are now satisfied that, so far as regards any prejudice to their interests, the law is substantially unchanged; indeed, absolutely unchanged with the two exceptions I will mention.

"One exception is this. Section 4 of the Act of 1855 says that any wharfs, quays and so forth may be taken as within the limits of the port, and those words, if rigidly construed, would include a private wharf made at private expense for the convenience of private traffic. We now propose to say that only works made on behalf of the public may be so taken. We do that on the assumption that the literal construction of the section could not have been intended, and that a Court of justice would struggle as hard as it could against such a construction; but whatever the alteration may be worth, it is in favour of the riparian owners.

"The other alteration is a mere verbal one. The present Act says that the Executive may define the limits of ports; and we go on to say that they may do it by notification in the Gazette, or by means of maps, posts or otherwise. But it is quite clear that Government may do that now. He who has power to define the property over which he has control may define it in any way he pleases. He may adopt a mere abstract definition by words, or a pictorial one by maps and plans, or a mechanical one by boundary-marks fixed on the property, or any combination of those modes of definition. Whether the definition is made according to one mode or another of these modes, it may transcend the legal powers of the Executive, and if so it will be *pro tanto* invalid, and will not override any private right. The mere circumstance that the Act mentions some modes of definition does not alter the quality or enlarge the quantity of the original power of definition given by it to the Executive. These modes of definition are indicated on account of a notion prevailing in some quarters that definition means only a verbal definition; they are what theologians would call an accommodation, a concession to human weakness, which we are often obliged to make in our drafts, and which I for one usually make with some reluctance.

"I have thought it right to acquaint the Council with the nature of this controversy so that they may see how matters stand at this moment. But I am glad to think that the riparian owners do not now feel that the Bill is calculated to place them in a worse position by reason of any alteration of the law which it effects. We have now a memorial from them to the Council, which has come in only within the last twenty-four hours, and which shows the position they now take up. They are afraid that the mere re-assertion of the law will place them in some worse position. I will read their own words from the memorial :—

"'Section 5, clause (*c*), of chapter II of the Indian Ports Bill fully guarantees all rights above the high-water-line; but your memorialists fear that after the discussion which has taken place the silence of the legislature on the subject of rights below that line may be prejudicial to them.'

"By 'the silence' of the legislature is meant the fact that we say nothing to the point but that which the law now says. I confess I cannot see how that silence can have the effect ascribed to it. We are passing this measure for the purpose, *first*, of making some substantial alterations of the law; and, *secondly*, of consolidating the law with such small amendments as are incidental to consolidation. Consolidation is in the main re-enactment. How can a Court of justice draw any inference from a mere re-enactment

under such circumstances, and for such an object, except the inference that it is intended to leave the law precisely as it stood before?

"Again, if we admit the validity of such a doubt as is here suggested, just see where it would land us. A considerable portion of our work is the consolidation of written law, and I repeat that consolidation means the re-enactment of large portions of the law consolidated. Are we always to hold our hands directly we find ourselves re-enacting something on which a controversy exists? Take, for instance, the Civil Procedure Code on which we are now engaged. In that Code there must at any given moment of time be many passages bearing on some dispute or other. Is it to be said that one party to the dispute is prejudiced because the other puts a hostile interpretation on the Act, and the legislature then repeats the Act without taking notice of the dispute? If we admit that principle we should never effect any large consolidation without entering into a number of controversies which we are not competent to deal with, and for which the fitting arena is a Court of law.

"The memorial suggests that the Executive authorities are unduly straining the law against them. All I can say is that, if that be so, a Court of justice is not likely to look with favour on their case; but that is a matter for the Court to decide.

"I therefore trust that the Council will accept the principle to which the Committee have adhered, namely, that the new Act should upon this point be in substance a repetition of the old one.

"There is only one more alteration which I will mention to the Council. The present law gives the Local Government power to appoint a Conservator, and it says that the Conservator shall be subject to the control of the Local Government. But it does not say how that control is to be enforced. Of course when the Conservator holds other Government employment, as I believe is always the case in the smaller ports, there is no difficulty in controlling him. But when the Conservator is represented by a body of independent gentlemen performing their duties from a sense of public spirit, such as our Port Commissioners and Port Trustees in large towns, the case is otherwise, and I am not sure how, in the event of a vital difference of opinion, the control would be enforced. Possibly the Local Government would find no easier method than the clumsy one of moving for a *mandamus*. We have therefore supplied the requisite machinery, and have added to the powers of appointment and control the power of suspension and removal. Of course such a power would only be

exercised on the occasion of some very grave controversy, but then it is only on an occasion of that kind that there would be any practical difficulty about the right of control."

The Hon'ble MR. DALYELL said that there was one point in connection with the Bill which he thought it desirable to bring to the notice of the Council, as it had not been mentioned in either of the reports of the Select Committee, and had not been referred to by his hon'ble and learned friend, the mover, in the remarks which he had just made. Amongst the papers which had been considered by the Select Committee was a letter from the Madras Chamber of Commerce containing many valuable suggestions on an earlier draft of the Bill, most of which had been adopted in the present Bill. In regard to section 45, the Chamber of Commerce had said: "It is observed that no port-dues or fees shall hereafter be levied in any port except under the authority of this Act. The Chamber would remark that it is desirable that this section should not prevent port-dues being levied under a Port Trust Bill at Madras, in the event of a harbour being constructed." Now, when this suggestion had been considered in Committee, there was nothing to show that there was any immediate prospect of the construction of a harbour at Madras, and they did not feel justified in making a proviso in the section to meet only a possible contingency. Since the presentation of the Committee's report, however, he (MR. DALYELL) had observed a statement in the local journals to the effect that the sanction of the Secretary of State had been received to the construction of the harbour, and it would therefore now be a matter for the consideration of the mover and the Council whether it would be advisable to insert a provision to the effect proposed before the Bill was passed, or whether it would be preferable to leave the matter to be dealt with by special legislation as soon as the harbour was completed. For his own part, he was disposed to think that the latter would probably be the best course, as no doubt, whatever provisions were made in the present Bill, a special Act would be required for various matters when the harbour was completed, and any provision in regard to port-dues which might be inserted in such an Act would of course override the provisions of the present Bill, which would be the earlier measure of the two.

The Hon'ble MR. BULLEN SMITH said he had just a single remark to make as to section 5 of chapter II of the Bill, and he could assure his hon'ble and learned friend that, in doing so, he was not insensible of the great trouble both he and the Select Committee had taken on the subject of the definition of high-water-mark. Still the matter was of such importance that MR. BULLEN SMITH wished to ask the

attention of the Council to a suggestion which had been made to him within the last few hours, namely, whether the addition of the word "average" to the explanation of the term "high-water-mark" given in that section was necessary or not. The explanation as it stood effectually excluded from the operation of the law all cyclone-tides, or tides which might be held to be of an exceptional nature; but there were in this Port of Calcutta, and probably in other ports situated on tidal rivers at a considerable distance from the sea, two sets of tides which could properly be called ordinary spring tides, that was to say, one set of spring tides during what were called the freshes when the river was swollen, which could be strictly called the ordinary spring tides for those months, the high-water-mark of which tides was very different from the high-water of the ordinary spring tides of other seasons of the year. It was thought by some that the Local Government, in determining the high-water-mark of "ordinary spring tides," would find itself face to face with a difficulty as to which of the spring tides were alluded to. It had therefore been suggested to him that, if the explanation were to declare that "high-water-mark" meant the average of the ordinary spring tides, it would meet the difficulty. He was not sufficiently acquainted with the language of drafting to know whether the suggestion he had made was sufficient to meet the object in view; but as the suggestion had been made to him, he thought it proper to bring it forward, and he almost apologised for doing so at this late hour, after the great trouble that the Committee had taken in settling the provisions of the Bill.

On one other point he would beg to be allowed to ask a question in connection with the concluding clause of section 60. He would ask whether in the words "or otherwise for giving medical aid to the seamen ashore or afloat in such port" was to be found the authority which would empower a Board of Port Commissioners to apply hospital-dues to the maintenance of a Health Officer. The matter was one of some considerable importance, inasmuch as the Lieutenant-Governor having determined to appoint a Health Officer for the Port of Calcutta, the expense must be provided by the Port Commissioners. But they had for that purpose no funds whatever beyond these hospital-dues and their general revenues. No doubt in a measure the appointment of a Health Officer would be for the good of the seamen; but it would also be largely, if not chiefly, for the good of the town to see that the banks of the river and the Port generally were so looked after as not to become a source of contagion and evil. He was not quite sure whether the expression "giving medical aid to the seamen ashore or afloat in such

port" would apply to the payment, by way of salary to a Health Officer, of any portion of such hospital-dues; but if the hon'ble and learned member in charge of the Bill thought that the words were sufficient to authorize such expenditure, MR. BULLEN SMITH was content.

His Honour THE LIEUTENANT GOVERNOR also had some doubts as to the expression used in section 60. He believed the point had been considered by the Select Committee, and that the Committee thought that the expressions used in that section were sufficiently comprehensive. As had been already explained by his hon'ble friend, Mr. Bullen Smith, it would be desirable to appoint a Health Officer, and to carry out measures of sanitation, and to defray the charge from the surplus-proceeds of these hospital-dues. It was very important that there should be no doubt as to the legality of such proceedings; he believed there was no doubt as to their necessity or expediency. He would suggest the addition of the words "or the carrying out of sanitary measures in such port:" that, he believed, would meet the difficulty.

Then, as regards the definition of the term "high-water-mark", he could not quite follow the argument of his hon'ble friend. It seemed to him that there could be but one set of "ordinary spring tides". He presumed that, in the event of any dispute, the proper authorities would decide as to whether such and such spring tides were ordinary spring tides. If there was any doubt upon the point, perhaps the hon'ble mover of the Bill would consider whether some addition should be made to the phraseology of that particular section.

Then, as regards riparian proprietors, HIS HONOUR begged to corroborate and to express his concurrence in all that had fallen from his hon'ble friend Mr. Hobhouse. The fact was that there was no controversy between the gentlemen who had signed the memorial on the one side, and the Port Commissioners and Bengal Government on the other, regarding anything that related to this particular Bill. There was a controversy existing between them undoubtedly, but it related to quite another Act, namely, the Calcutta Port Improvement Act, which was an Act of the local legislature passed in 1870. Well, it appeared to him that the real object of the memorial to which his hon'ble and learned friend had alluded was to get inserted into the present Bill certain expressions which should affect the working of the other Act. He was sure the Council would perceive that such a course would be very inconsistent, inasmuch as that Act did not happen to be before the Council; and unless the present Bill were to be read in conjunction with the Port Improvement Act, it would be impossible for the Council to properly observe the

practical effect of the proposed expressions. He had had the advantage of joining the Select Committee on the occasion when this matter was discussed; he had also had the advantage of discussing the question at issue very carefully with the memorialists themselves, and he was satisfied that, whatever claim in law or equity they might have to compensation with respect to the just and necessary action of the Port Commissioners, there was full power vested in the Local Government by the Port Improvement Act to consider those claims and award such compensation as might appear just, and his advice to the memorialists had been that if they considered themselves aggrieved in any way, they could submit their claim for consideration in reference to the Port Improvement Act.

He had now only to express his satisfaction in respect to what had fallen from his hon'ble and learned friend in respect to the question of a Conservator of the Port; whether the Conservator should consist of a single officer, or whether the conservation of the Port should be vested in a body of Commissioners. Having had the advantage of attending the Select Committee, he was satisfied that the power of control vested by the Act as it now stood in the Local Government was sufficient for all practical purposes. He need not point out the great interest which the Local Government had in the maintenance of strict Marine discipline in the Port of Calcutta. If ships were lost or sacrificed, or otherwise endangered or damaged in this important port, it was essential that the Local Government should have the power of enquiring who was to blame, and it was also essential that the Local Government should have the power of punishing the official who might be deemed blameworthy notwithstanding the opinion of any other local authority; and for the exercise of this discretion the Local Government was responsible to the Government of India alone. Then, that being the case, if the Local Government was to be responsible for the safety of life and property here, it should possess effective power, and he was advised that the Bill as amended by the Select Committee and as it had been explained by the hon'ble and learned mover, was sufficient for the purpose.

He had now only to express his acknowledgments, on behalf of the Local Government and on behalf of the community of Calcutta, to the Legislative Department for the care and attention that they had paid to this important measure, and he only hoped the Council would be kind enough to consider the addition of the words he proposed in section 60, and to consider exactly what should be done with reference to the definition of the term 'high-water-mark'

in reference to the remarks which had fallen from his hon'ble friend Mr. Bullen Smith.

The Hon'ble MR. BAYLEY said he had not had the honour of being on the Committee on this Bill, but with reference to what had fallen from his hon'ble friend, Mr. Dalyell, if any amendment of the Bill were contemplated, he thought it would be worth while to consider the point raised by the hon'ble member; for, as MR. BAYLEY understood the wording of the present Bill, it put a maximum limit on port-dues which, Mr. Dalyell seemed to say, would be insufficient to meet the demands of the Madras Harbour, and this provision would have to be modified accordingly by the legislation which the latter undertaking would probably render necessary. If this were so, then any legislation in regard to the Madras Harbour would have to be undertaken in the Imperial Council, for it was beyond the power of a local Council to repeal or modify a law passed by this Council, and yet he (MR. BAYLEY) was not aware that this Council was prepared to undertake legislation as to the Madras Harbour, which seemed clearly a proper subject for the local legislature.

The Hon'ble MR. HOBHOUSE said he would answer the questions put to him in order. The first was as to the proposed harbour for Madras. He thought it was not desirable to introduce an exception into this Bill on account of some contemplated operation which that exception would cover. We were almost sure to find when the change did happen that our exception would not quite fit it; there was always a chance of that when we took a step in the dark, and it was much safer to deal with the case when it arose. The words "no port-dues or fees shall be levied except under authority of this Act" were in the present law. The prohibition existed, and he had no doubt it was proper that there should be that prohibition, so that this legislature might consider whether or not port-dues should be levied which were beyond the amount allowed by the Act. We did not know whether any such operation in Madras would take place, though it seemed likely from what his hon'ble friend Mr. Dalyell had said. But then we did not know how far they would want to impose dues beyond the maximum allowed in the Act. On these grounds he thought it was better to pass the Bill as it stood and to see when the event happened what we were required to do.

His hon'ble friend, Mr. Bullen Smith, had referred to the definition of "high-water-mark." MR. HOBHOUSE knew the extreme difficulty of expressing in words any rule which should apply to the circumstances of all ports, and he thought whatever expression the Council might adopt, there would be difficulty

in applying it to some cases. In the generality of cases such a rule would work without difficulty. If you asked a sailor or an inhabitant familiar with any coast what was the ordinary reach of particular tides, he would tell you with sufficient accuracy and certainty in most cases. With regard to the peculiar circumstances of the port of Calcutta which his hon'ble friend had mentioned, it seemed to him that the introduction of the word "average" would not meet the wants of the case, nor accord with the principle upon which the Committee had gone—and he believed it was a sound principle—that when spaces were regularly, frequently and in the ordinary course of Nature, covered with water, those spaces were used by persons who frequented the port and fell within the natural limits of the port. He understood his hon'ble friend to say that in certain months of the year the ordinary spring tides were higher than in other months, and that there were two sets of ordinary spring tides. Now we had got to consider two questions: one was what was the principle which ought to apply to this state of circumstances? and it seemed to him that the correct principle was to include within the limits of the port that which was so often or so regularly covered with water as to be within its natural boundary, and to say that the high-water-mark of the port was the highest point reached by any ordinary spring tide. The second question was whether the words which were used covered what we wanted to effect. If it were true that the highest tides which occurred in the freshes were correctly designated as ordinary spring tides, then the words now in the Bill met the case, for nothing could be said to be the high-water-mark of ordinary spring tides which fell short of the highest point reached by ordinary spring tides. If however the Council should think differently, and if they thought any alteration of the definition should be made, he would abstain from moving to pass the Bill, because in a matter of such nicety there was difficulty and danger attendant upon alterations made in a debate at this table without preparation beforehand.

Now to pass to section 60, with regard to the application of hospital-dues. It must be remembered what these dues were established for; they were a new rating upon ships in consideration of medical aid given to the crews of those ships, and to support any hospitals which might be established for those crews. The rates might be levied upon all the shipping in the port, and for the common benefit they received all must pay. The Select Committee had an application—he rather thought it came from the Government of Bengal—to introduce some special words in this section providing for the appointment of a sanitary officer and general sanitary inspection. He believed the Committee

were unanimous—at all events he would express his own opinion—that the introduction of any such specific words would be a little dangerous and might give rise to complaints from ship-owners. As far as the services of such an officer were necessary or expedient for the sake of the health of seamen either ashore or afloat, so far it seemed to him that the words in the Bill met the case, and it would be perfectly fair, if the Lieutenant-Governor appointed a special officer for that single purpose, to pay his salary from the hospital-dues, and if he appointed an officer for that duty in connection with other duties, to pay a reasonable proportion of his salary out of such dues. But suppose we used the words suggested, that these dues might be applied in paying for sanitary measures, then we might be providing the whole of the town, or that part of the town which lay near the port, with sanitary measures at the expense of the ship-owners alone. If the officer was appointed to superintend the sanitary condition of the whole port and of the persons who resorted to the port, he would be doing a great deal of work for the town and not simply for the ships in the port, and we might have some complaint if the whole of his salary was paid out of the hospital-dues. For that reason MR. HOBHOUSE would keep the words of the section as they were, and he thought it would be found that they covered every reasonable expense that was necessary; but if we went beyond that, he thought there would be complaints founded upon justice and which were not unreasonable.

His Excellency THE PRESIDENT said:—"I think that the point raised by my hon'ble friend, Mr. Bullen Smith, is one of some importance, and I am inclined to agree with Mr. Hobhouse that it requires some further consideration.

"I therefore think it would be advisable that my hon'ble friend, Mr. Hobhouse, should postpone his motion in order to allow the Select Committee to take the point into consideration. At present the words in question appear to me to be open to the possibility of misconstruction."

After some further discussion, the Motion that the reports of the Select Committee be taken into consideration was postponed.

PROBATES AND LETTERS OF ADMINISTRATION BILL.

The Hon'ble MR. HOBHOUSE asked leave to postpone the motion that the Reports of the Select Committee on the Bill to amend the law relating to Probates and Letters of Administration be taken into consideration.

Leave was granted.

CIVIL PROCEDURE BILL.

The Hon'ble MR. HOBHOUSE presented a preliminary Report of the Select Committee on the Bill to consolidate and amend the Laws relating to the Procedure of the Courts of Civil Judicature. He said that it recounted a great many details which it would not be profitable to mention. The Select Committee had made a considerable number of alterations in the draft prepared in the Legislative Department, and they directed that the Bill should be printed and published, and that opinions should be invited specifically upon a number of points and inferentially upon other points included in the Bill.

MADRAS SALT BILL.

The Hon'ble MR. ELLIS presented the Report of the Select Committee on the Bill to amend the law relating to Salt in the Presidency of Fort St. George.

The Hon'ble MR. ELLIS applied to His Excellency the President to suspend the Rules for the Conduct of Business. The reason he asked this of His Lordship was that, in anticipation of the Bill being immediately introduced into some districts of the Madras Presidency, the Madras Government had written to beg that no time might be lost in passing the measure. They had taken steps to prevent any anticipated run upon the the salt-districts, and such measures caused inconvenience to the salt-traders and the people generally, inasmuch as the sale of salt would necessarily be restricted. The Madras Government therefore asked that no time might be allowed to elapse before the passing of the Bill.

His Excellency THE PRESIDENT observed that the reasons given appeared to him to be sufficient, and he therefore declared the rules to be suspended.

The Hon'ble MR. ELLIS then moved that the report of the Select Committee be taken into consideration. He had on a recent occasion fully explained the objects and reasons of this Bill, and he need not therefore trouble the Council again at any length. He was afraid that the Bill in its present form was, as a specimen of drafting, hardly satisfactory to the Secretary to the Council. That was not owing to want of ability on the part of the learned gentleman, but owing to the necessities of the case. It was to be remembered that the Bill was an enabling one, permitting the Government to take action if it considered it desirable. The Bill did not render it obligatory on the Government to take action on the Bill being passed. In consequence of the Bill taking that form, the Council could not repeal absolutely

such portions of the law as stood in the way of the measure when it was to be brought into force; they could only say that these old laws were to be repealed upon its being determined that the measures which the Bill gave permission to take should have effect. There was therefore not an absolute but a contingent repeal of those laws, and the result was to make it very awkward in drafting. He made this apology, lest it should appear that the result was the consequence of want of skill, whereas it was the consequence of the form which the Bill had to take.

The second section of the Bill gave power to the Governor General in Council to fix the duty on salt in Madras at the rate of Re. 1-13-0 independently of any charge which might be incurred before the salt was brought to sale. On a notification to that effect being made by the Governor General in Council, it became the duty of the Local Government to fix, for all salt which might be sold under their orders, a price which would include the duty together with the charges which might be incurred in bringing the salt to sale. The Madras Government were asked for suggestions, and they had written stating one or two points for which they desired that the Bill should make provision. Their suggestions had been adopted. In one case they proposed the omission of a clause which had been inserted fixing for three years the price which might be determined under this Act, it having been inserted on a suggestion from his hon'ble friend, Mr. Dalyell, as giving fixity to the price, which would be of benefit and advantage to the traders. The Madras Government had objected to that, and consequently the Select Committee omitted the provision. It would be seen that the third section gave the Government the power of varying the price in any of the local areas in which the Governor General had declared the rate of duty to be Re. 1-13-0, and also to vary it in respect of the quantity which might be sold, or (which was a matter of some importance to the Madras Government) with reference to the description of the salt sold and the manner in which it was procured; the fact being that in some districts salt might be procured from Bombay or other distant places, and so cost a great deal more than salt procured in the district itself and which might be of less value than the salt imported from a distance. The section, it was hoped, was sufficiently elastic to enable the Government to take into consideration all the circumstances necessary to fix the price so as to include all charges. The Bill was a short one, and he did not think there were any other circumstances connected with it which called for explanation.

The Hon'ble MR. DALYELL said that when the Bill had been last under discussion he had expressed some doubts as to whether all his hon'ble friend's

anticipations in regard to its results would be realized if it was passed in the shape in which it then appeared. Since that time the Bill had been very considerably modified in Select Committee, and if, as he (MR. DALYELL) understood, it was now the intention to put in force the powers taken under the Bill in the districts of Malabar and Canara only, he quite thought that all the advantages would be secured which his hon'ble friend had predicted for the measure when he first obtained leave to introduce it. It was not necessary that MR. DALYELL should recapitulate the arguments of his hon'ble friend in favour of the Bill. As Mr. Ellis had told the Council, they were mainly the same as those which had been urged by successive Governments of Madras for some years past, and some of them had, he (MR. DALYELL) believed, been brought forward by himself some time back, in his capacity of Secretary to the Madras Board of Revenue. The question was simply whether the people of Malabar and Canara should be required to pay the ordinary salt-tax of Re. 1-13-0 per maund, or whether they should be permitted, as heretofore, to pay this impost at a rate of from Re. 1-8-0 to Re. 1-9-0 per maund, a lower scale of tax than was paid in any other part of the Empire, except Scind and British Burma. There was, however, some force in the reasons which had induced the present Madras Government to differ from the opinion of their predecessors on this question. Their grounds for doing so were concisely stated in paragraph 6 of their proceedings, dated 17th October 1874, which were among the papers which had been printed in connection with the Bill. He would ask the permission of the Council to read to them this paragraph :—

"Independently of the general principle on which this Government have heretofore acted, namely, to charge a uniform monopoly-price for the whole presidency (many local variations notwithstanding), the following reasons have influenced the Governor in Council in his present determination :—

"(1.) The people of the West Coast, if they paid a higher price to Government than other coast-districts, could never be made to understand that they were not unequally and inequitably taxed.

"(2.) To raise the price in Malabar and Canara would be a breach of a long-established arrangement of the nature of a prescriptive right, which has been tacitly acquiesced in for many years and originated in peculiar circumstances connected with the tenure of landed property in these districts.

"On grounds, then, of (1) policy, and (2) justice, the Governor in Council is opposed to any change in the price of salt in Malabar and Canara."

These then were the objections of the present Madras Government to the measure before the Council, and to them might be added the general one

to which he had alluded when the Bill was introduced, that it was perhaps hardly worth while to insist upon an equal incidence of salt-taxation throughout the Presidency of Madras, so long as the inequalities of taxation which existed throughout the remaining portions of the Empire were allowed to continue. There was a further argument which had been strongly urged in some quarters in favour of the present state of matters. It was that, whenever the State might find it convenient, for fiscal purposes, to disallow the local manufacture of any article of consumption which was liable to tax, it was the duty of the State so to adjust the rate of taxation in that particular locality as to insure a supply of the article to the public at a price not in excess of a sum made up of what would be the cost of production on the spot, together with the ordinary rate of duty levied in other places. As it appeared, however, from the proceedings to which he had just referred that it was now the intention of the Madras Government to develope the local manufacture of salt in the Western districts to the greatest possible extent, this argument no longer applied to the particular case under consideration.

As he (MR. DALYELL) had already said the arguments in favour of the Bill had been long familiar to him, and he had lately given his very best consideration to those which had been urged against it, to which he had just drawn the attention of the Council. If these latter were examined from a local point of view only, he thought it would be generally admitted that they were of very considerable weight; but he confessed that if the question was considered from its imperial side, it was somewhat difficult to find any really adequate grounds for opposing the Bill. It was not denied that the people of Malabar and Canara were as well, or even better, able to pay the full rate of salt-tax than their neighbours of the Bombay Presidency and of the other districts of the Madras Presidency, and though long usage might have given them a sort of prescriptive right to obtain their salt at the same price as that charged for the article in the Eastern districts, there was no reason why such a right should be more respected in their case than was a similar right in the case of the much less wealthy populations of the Ceded Districts, who were recently (mainly on grounds of consistency) brought under a more rigid system of salt-taxation by the virtual suppression of the manufacture of earth-salt, which had been permitted for years under a nominal license-fee. But what carried more weight with him than any other argument in favour of the Bill, was that he could not but consider it as the second of a series of measures, of which the first was the Salt Bill of last year, which would eventually result in the entire removal of the so-called customs-line, and in a much

nearer approach to a general equalization of the salt-tax throughout India than had yet been attempted. The remarks of His Excellency the President upon the Inland Customs Bill the other day must, MR. DALYELL thought, have been read with satisfaction by every person interested in this question, as intimating that, at any rate so far as the customs-line was concerned, this result was not so very far distant. Any subsequent efforts which might be made to secure a greater uniformity of salt-duty than at present existed, would necessarily involve a considerable reduction in the high rates which were paid in the Northern portion of the Empire. Now when it was remembered that, speaking roughly, the whole population of these localities paid a lower gross revenue, and consumed a smaller gross quantity of salt, than did half their number in the lowly taxed provinces of Southern and Western India, it was impossible to believe that this high rate of tax was not repressive of the general use of this necessary of life, and that a reduction of the tax would not result in an increased consumption and perhaps in an improved revenue. Any measure then which was of such a character as to be likely to facilitate such a reduction in future years was deserving of cordial support, and he believed he was correct in stating that though the anticipations in regard to the effect of the Salt Act of last year had not as yet been fully realized, there was every prospect of their being so to a very large extent before the Council assembled for another session. In conclusion, he desired to express his concurrence in the remarks of his hon'ble friend as to the expediency of the Bill being passed into law at once in order to put an end to that disturbance of trade which was inevitable, whenever it became known that the rate of salt-duty in any particular locality was likely to be altered.

His Highness THE MAHÁRÁJÁ OF VIZIANAGRAM said that in giving his vote for the passing of this Bill, he would beg to say that, owing to the publication of the Bill on its introduction, there had naturally been an apprehension in the mind of the salt-traders that the effect would be to raise the price of salt, and there had therefore been danger of a great run on the salt-stores.

The Madras Government had, His Highness believed, taken precautions to prevent this, but it was evident that the sooner the Bill became law the better.

The recommendation of the Madras Government that District-averages might be struck in each District or group of Districts where a decided difference existed between the cost of imported and that of the home-made salt—for example, in Canara—had fully been complied with in the Bill in its present form, and

he was sure that the object of the Madras Government thereby would be obtained.

It was to be hoped that the present Bill might lead to a system of excising salt in the Madras Presidency with a fixed duty, instead of selling it on behalf of Government at a fixed price, and that thus private enterprise in the salt-trade might be created by degrees to take the place of the present monopoly-system.

The Motion was put and agreed to.

The Hon'ble MR. ELLIS moved that the Bill as amended be passed. He said it was with much satisfaction that he found His Highness the Mahárájá of Vizianagram support this Bill, inasmuch as his connection with the Madras Presidency gave his opinion great weight, and it was also a source of congratulation to learn that his hon'ble friend Mr. Dalyell, after full consideration, was able to give the Bill that support which, no doubt from a feeling of allegiance to the Madras Government, he had at first hesitated to give. MR. ELLIS might state, with reference to the observations which fell from the hon'ble member, that the arguments with which he (MR. ELLIS) introduced the Bill were mainly based on what had fallen from the Madras Government itself, and indeed it now appeared that they were based on letters which had emanated from the hon'ble member himself. It was therefore satisfactory to find that he had returned to his first opinion, and that he was no longer haunted with doubts as to the correctness of those opinions. The arguments which appeared to have had some weight with him did not appear to MR. ELLIS to be such as ought to make him hesitate. With all respect for the opinion of the majority of the Madras Government—for they were not unanimous—he did not see that much stress could be laid on the assertion that if this measure passed, the inhabitants would not be made to understand how the price of their salt was greater than elsewhere. It was surely known that the duty throughout Southern India, as throughout the Western Coast of Bombay, was Re. 1-13-0; it would therefore be abundantly clear and easily understood on the Western Coast of Madras that the cost of bringing salt to their doors must be added to the amount of duty before they could get their salt; and as the Bill did not put the selling-price and customs-duty and charges all together, it would be easy for the private trader to understand for himself how the charge to him for salt was made up, or if there was any misapprehension it would be very easy for the officers of Government to make it clear to the people how the price was arrived at.

The other objection was a stronger one if it could be supported, namely, that there was a decided understanding that the people of those districts should have their salt at a lower rate than their fellow-countrymen in other places. If such a proposition had been established, men like his hon'ble friends, Mr. Sim and Mr. Robinson, members of the Madras Government, would have been the last to have supported any appearance of breach of faith, and he was quite convinced that there could not be any solid foundation for such an assertion. On examining the grounds upon which that assertion was based, it did not appear that the people had a decided understanding that they were to get their salt at a cheaper price than others. They were to have salt at a moderate rate; and that salt would still be available at a moderate rate could hardly be doubted when it was considered that other parts of India were paying a much higher rate; they were also to have the privilege of manufacturing salt for sale to Government: as for this, if they chose to do so, it was the intention of the Madras Government to give them every facility for the local manufacture of salt, and he did not see in these arguments any ground whatever for the Council withholding their assent to the measure before them.

With regard to what had fallen from his hon'ble friend, Mr. Dalyell, as to the effect the Bill would have upon the equalization of the salt-duty throughout India, MR. ELLIS might say that, although the measure in itself was not an important one, and was proposed to be immediately applied to only a restricted part of the Madras Presidency, yet it had an importance as paving the way for the equalization of the salt-duty. So long as there was a selling-price in Madras while in other parts of India there was an excise-duty upon salt, there could be no means of bringing the duty in Madras into conformity with the duty in other Presidencies. For his own part, having regard to the whole system of taxation, he was not prepared to say that they ought to have an absolutely uniform rate of duty throughout India; indeed, he deprecated such a principle being carried to its utmost extent. Yet, on the other hand, there were such wide differences in the rates of duty existing now, and there were such great difficulties in the way of removing the barriers to trade and commerce caused by the Inland Customs-line, that he would be glad to see a large reduction of the duty in some parts of the country, with even a small rise of duty in others, if we could attain such an approach to uniformity as would enable Government to administer the tax with the least amount of vexation to the people, and secure to them a larger supply of salt, while at the same time securing to the Government a reasonable amount of revenue. Perhaps these

observations were not wholly relevant to the Bill before the Council, but they had some bearing upon it, as he considered this Bill a step of some importance towards meeting those expectations and hopes which he and so many others entertained of a modification of the present system, though he did not desire a complete and entire equalization of salt-duties in India.

The Motion was put and agreed to.

PANJÁB COURTS AND OFFICES BILL.

The Hon'ble SIR DOUGLAS FORSYTH moved for leave to introduce a Bill to amend the law relating to certain Courts and Offices in the Panjáb. He said that the Bill was intended to give effect to the scheme which had been recently sanctioned for strengthening the judicial and executive administrations of the Panjáb. The peculiarity of the Panjáb, and the Non-Regulation system in general, was such that in addition to the important duties imposed upon the executive officers who had already sufficient work on their hands the whole judicial work was also entrusted to those hard-worked officers. In the early days of the administration, when the population was scant and civil rights were almost unknown, when trade and commerce had not recovered from the harassing effect of Sikh misrule, the administration was carried on by a body of picked officers, who were able to carry on their work most ably—how ably was a matter of history, or if he wished to appeal to a living authority, he could not do better than appeal to his hon'ble friend, Sir Richard Temple, who himself was one of the most distinguished of those officers. In the course of time, as the population increased and trade and commerce extended, litigation in the country sprung up, and the Civil Courts began to be greatly resorted to. The officers found themselves burdened with the duties they had to perform, and the burden was further increased by the creation of separate Departments, the head of every one of which felt that he had a right to claim an important portion of the time of the hard-worked Deputy Commissioner. Notably, the establishment of the Chief Court of the Panjáb, though it was a step taken no doubt in the right direction for the improvement of justice and the better administration of the Province, yet as affecting these executive officers who had to carry out the orders of the Chief Court, it placed them in the unfortunate position of having to serve two masters. There was a great incongruity between the sedentary life of the judicial officer, and the active life of the executive administrator. But the Chief Court said to the officer, "you shall sit at your desk during certain hours of the day to enable you to attend to your judicial work;" the administrative head,

on the other hand, said to him, "you must always be in your saddle." It was difficult for a man to be in two places at once, and in these days the tendency was for a man to take to that portion of his work upon which the pressure was the strongest. According to the judicial system, a man's work was judged by the results as they appeared upon paper; the monthly statements were called for, and any dereliction was quickly noticed. It was not the same in the executive department. The welfare of the people was entrusted very much to the hands of the executive officer, but he was left much to act according to his own discretion and for the good of the people entrusted to his charge. The consequences had been rather injurious to the Revenue administration of the Province, and attention was called to the matter by a former Lieutenant-Governor. About six years ago a very able Minute on the subject was written by a former Law Member of His Excellency's Council, and from that time there had been considerable discussion as to the best means of strengthening the judicial and executive administration of the Panjáb. Some of those who had been consulted were in favour of making a complete separation of the judicial and executive services, and had given their reasons for it. That, however, had not been considered to be desirable. But a scheme had been put forward, and had now been sanctioned, which went a long step in the direction of the separation of the judicial and executive offices, and it was proposed to appoint, in every district where it might be found necessary, a Judicial Assistant who would relieve the Deputy Commissioner of his judicial work and leave him free to apply himself to the management of his executive business. That was to say, the Assistant, so long as he was employed on judicial duties, would satisfy all the requirements of the Chief Court of the Panjáb by being always present in his Court, and at the same time the Deputy Commissioner would be left free to look after equally important business which belonged to his executive capacity. The scheme comprised this arrangement, that the Judicial Assistant should exercise the appellate powers which now belonged to the Deputy Commissioner. In the lower Courts, in the Courts of first instance, hitherto presided over by Tahsíldárs and Náib Tahsíldárs, it was proposed to add a Munsif, who, as a general rule, would take up the judicial duties of the Tahsíldár, but who might be appointed to do any other duty of the Tahsíldár. Thus, while maintaining the peculiar features of the Panjáb system, an almost complete separation of the judicial and executive services would be established. But in order to carry out this scheme, it was necessary to resort to this Council. Section 20 of the Panjáb Courts Act provided that, whenever the number of cases depending in any district or divisional Court should be so great as to prevent their

being disposed of within a reasonable period, the Local Government might invest any officer with civil and criminal powers. Such appointments were therefore, by their nature, temporary, and it was now proposed to make them permanent. In doing so, very little alteration would have to be made in the existing Act.

The Motion was put and agreed to.

The Council adjourned to Monday, the 15th March 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA ;
The 9th March 1875.

Office Supdt. Govt. Printing.—No. 766 L. D.—15-3-75.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Government House on Monday, the 15th March 1875.

PRESENT :

His Excellency the Viceroy and Governor-General of India, G. M. S. I., *presiding.*
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. B., C. S. I.
The Hon'ble B. H. Ellis.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble E. C. Bayley, C. S. I.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble R. A. Dalyell.
The Hon'ble H. H. Sutherland.
The Hon'ble J. R. Bullen Smith.
The Hon'ble Sir Douglas Forsyth, K. C. S. I.

PORT-DUES BILL.

The Hon'ble MR. HOBHOUSE presented the final Report of the Select Committee on the Bill to consolidate and amend the law relating to Ports and Port-dues, and moved that the reports on that Bill be taken into consideration. He said that this was the motion which was postponed on the last occasion, and he would briefly refer to the points which the Select Committee on the Bill had since considered. The Committee met and discussed the matters for the sake of which the Bill was postponed, and the result was that two small, and as he thought purely verbal, alterations had been introduced in the Bill. The first of these was in section 5, where the Committee had altered the explanation by saying that "high-water-mark was the highest point reached by ordinary spring-tides at any season of the year." As he believed, that was exactly the meaning which would have been assigned to the expression which was used before. Then they spoke of "ordinary spring-tides," and all that would have to be shown was that a tide was an ordinary spring-tide; then the high-water-mark of that tide would designate

the limits of the port. At all events the limits of the port would not be of less extent than the high-water of that tide. But as it appeared that there were in Calcutta two ordinary spring-tides, and as it was possible to doubt whether each class of such tides was entitled to be called "ordinary spring-tides," or whether some calculation would be made as to which class of tides was most frequent, so as to call that which was most numerous the "ordinary spring-tide," the Committee had introduced the words "at any season of the year," so that the ordinary spring-tide of any season might be taken as marking the limits of the port. He was sorry to see from a memorial which came in that morning, that the riparian owners were of opinion that they were injured by this alteration. His belief was that they were not injured. If Act XXII of 1855 was to be interpreted in a Court of law, he thought there was as much chance of its being construed more unfavourably to the riparian owners, as there was of its being construed more favourably to them, than was actually done by the Bill. The present law said that "high-water-mark" was to be the limits of the port, and it was just as easy to construe "high-water-mark" to be the highest mark that the water ever reached, as to construe it to be anything less than what the Bill construed it to be. What the Bill did was to eliminate one element of uncertainty. He would not enter again into the arguments upon which the Committee had arrived at the principle imported into the Bill, but nobody had come forward to say that it was not a reasonable principle, or that it was not necessary for the protection of the public who use a port, to bring under public control all those pieces of ground which, under the ordinary operations of nature, were covered with water.

The next alteration was also, as it seemed to him, of a verbal character: it was in section 60, where, instead of saying merely that hospital port-dues might be applied for providing medical aid for the shipping and seamen in a port, the Bill now said that it might be applied for providing sanitary supervision and medical aid for the shipping and seamen. As he had explained before, if sanitary supervision was necessary for the physical healthiness of the shipping and seamen, it would come under the words "medical aid;" but the Committee had put in the words "sanitary supervision" in order that there might be no dispute but that medical aid did include the more remote operation of sanitary supervision as well as the more direct and immediate modes of aiding the sick.

There was only one other point which the Committee had to consider—whether any exception should be made in the section which said that no

port-due should be levied except under the authority of the Act. That was section 45 which enacted as follows :—

"No port-dues or fees shall hereafter be levied in any port except under the authority of this Act."

The question was whether we should take notice of a port that was about to be made at Madras, in which the Madras authorities would desire to levy dues exceeding the maximum fixed by the Act, and whether some exception should be made which would leave the Madras authorities at liberty to levy larger dues. The matter stood thus. According to the present law, Act XXII of 1855, the Local Governments were forbidden to levy any port-dues or fees excepting what might be levied under the authority of the Act. That Act was passed in 1855. Then came the Indian Councils' Act and gave power to the local legislatures by which they might set aside any Act of Council passed previously to 1861; so that in that way the Madras legislature might at this moment set aside any requirement in the Act of 1855 and make an enactment of their own. The principle of the present Bill was to bring the matter back to the position of 1855, and to make the levying of port-dues rather a matter for the supreme legislature than for the local legislatures to consider; and that principle he thought had better prevail even with regard to such a case as the port of Madras. When we knew what was required, we might then relax the limits placed by this Bill. In the first place it would be some few years before the Madras authorities would be in a position to levy dues; the port would not have been made, and they could not judge now what would be the maximum dues they would desire to be levied. It was clear that the maximum would be fixed according to the amount spent in making the port: and that could not be foreseen. As the Bill went on the principle of fixing the highest charges which were to prevail throughout India, it was on the whole better that the scale so fixed should not be altered until we saw exactly what was to be done.

The Hon'ble MR. SUTHERLAND had to apologize to His Excellency the President for venturing at the last moment to trouble the Council with any remarks on this Bill. Although he had not previously addressed the Council on the subject, he had followed with interest the progress of the Bill before the Select Committee, and his hon'ble and learned friend, Mr. Hobhouse, had permitted him to attend the meeting of the Select Committee when he proposed to bring forward the rights of the riparian proprietors as affected by the fifth section of the Bill. Mr. Hobhouse explained there, as he had done

previously at a sitting of the Council when MR. SUTHERLAND was not present, that this Bill was a consolidation Bill and altered in no way the existing law. The hon'ble and learned member had pointed out that conflicting interests were at stake, and that was not the time to interpose in favour of either of the litigants. MR. SUTHERLAND admitted the reasonableness of the position taken up by the hon'ble member, and he was content to say nothing further upon the subject; and it was only with reference to the definition of "high-water-mark" that he now desired to say a few words. As he believed, this last definition affected the rights of the riparian proprietors in a way which the previous definition did not. He admitted that the absence of definition in the existing law by no means prevented this last view being taken by the Courts of law. But if His Excellency would allow him, he would read to the Council the definition under section 5 in the Bill as introduced:—

"In this section 'high-water-mark' means the line of the medium high tide between the springs and the neaps."

That definition was altered in the Bill as published on the 19th December last, which enacted that—

"In this section 'high-water-mark' means the high-water-mark of ordinary spring-tides."

The definition was unaltered in the Bill as printed on the 6th March. In the Bill now before the Council, issued on the 12th instant, as the Hon'ble Mr. Hobhouse had explained, the definition stood thus:—

"In this section 'high-water-mark' means the highest point reached by ordinary spring-tides at any season of the year."

He would submit that this last definition affected the private rights of river-side proprietors. Their contention was, as hon'ble members were aware, that their rights to the foreshore extended to low-water-mark. It was not for him to discuss the question, but he did know that in certain high legal quarters it was thought that their rights were good. Therefore, whilst he admitted that the present definition was much more precise than any of the previous definitions, he submitted that precision was attained at the expense of private rights, and he thought that the definition of 19th December and 6th March should be retained.

His Honour THE LIEUTENANT-GOVERNOR thought it desirable that he should say a word or two in reply to the remarks which had just fallen from his hon'ble friend, Mr. Sutherland. It appeared to him that the remarks which had been made by the hon'ble and learned Mover of the Bill exactly met the point touched. The question was, what should be the definition of "high-water-mark?" We contended that high-water-mark meant the highest point which the water reached at regular and periodically recurring intervals; that if some tides were higher than others, the term "high-water-mark" meant the highest point which was reached by any tide, except of course cyclone-waves and extraordinary physical disturbances: with the exception of those unusual and abnormal occurrences, high-water-mark meant the highest point which the water reached at regularly and periodically recurring intervals. If that were the sound and reasonable acceptation of the term, it seemed right, when you came to consolidate the law and to make every question as indubitable and as indisputable as possible, to make that definition perfectly clear. He therefore concurred with the hon'ble and learned Mover in stating that the Bill did nothing more than give clear expression to the law as it stood since 1855.

His hon'ble friend Mr. Sutherland maintained that certain riparian proprietors had rights not only below high-water-mark, but down to low-water-mark.

The Hon'ble MR. SUTHERLAND—That was their contention.

HIS HONOUR continued:—that certain riparian proprietors contended that they personally and individually happened to have rights not only down to high-water-mark, but down to low-water-mark. The exact fact was that that contention depended upon certain proceedings taken by certain Settlement Officers some years ago. If those proceedings virtually had given away to particular persons rights which belonged to the public or the Government, and the Government now took those rights away, that would be a proper question perhaps of equity, or perhaps for litigation, to determine whether those gentlemen had a claim to compensation or not. The claim to compensation would arise, not in any way from an interpretation of the general law, but merely in regard to the legal consequences of certain acts of the Revenue Officers of Government. If that, then, was the exact question, their proper remedy was first to appeal to the Local Government as a matter of equity, and failing that, to try the question in a Court of law. The question was not at all the effect of a definition in this Bill upon the Act of 1855, but simply a question as to what were the

results and legal consequences of certain fiscal acts of the officers of the Bengal Government: on behalf of the Bengal Government we were entirely prepared to take that question into precise and accurate consideration; and if the riparian proprietors were dissatisfied with the decision obtained from us, they had their remedy in law. But it was not right for them to ask this Council to legislate beforehand on the possible issue of a legal trial, when the Council could not have both sides of the question before them. It was premature to raise the question here, because the Local Government had never refused to give any compensation which a Court of law or even a Court of equity might give. We had had to support the Port Commissioners in the execution of their duty under the Bengal Act of 1870, the said duty being to take up land on the river-bank for certain important public purposes.

Well, then, he had only a very few words more to trouble the Council with, and that was with reference to section 60, as to which the hon'ble and learned Mover had been good enough to explain that the words had been enlarged so as to include sanitary superintendence as well as medical aid to be provided for the port. His Honour desired to say that that extension of the wording of the Act was extremely necessary, for, as the Council might be well aware, the health of the seamen and mariners who frequented this port was quite as much dependent upon good sanitary supervision as upon medical aid. It was the application of the old proverb that prevention was better than cure, and he was sanguine that the power which the Bill gave the Government to apply hospital-port-dues to the sanitary supervision of ships and of the waters in which ships lay at anchor, would be the means of great improvement, and tend to the welfare of a very important class of British seamen and the mariners of other nations who frequented the port of Calcutta.

Major-General the Hon'ble Sir H. W. Norman having been on the Select Committee on this Bill, desired to say that he entirely agreed with what had fallen from his hon'ble friend Mr. Hobhouse and His Honour the Lieutenant-Governor. Infinite trouble had been taken with the Bill, and he did not think it was possible to arrive at a better definition of high-water-mark than that to which the Committee had come, when it was considered that the Bill had to deal with all the varying circumstances of ports and rivers in British India. He thought the riparian proprietors would certainly be in no worse position if this clause were passed than they were in at present. He desired to draw the attention of the Council to the way in which private rights were guarded by the Bill. Clause *(d)* of section 2 provided that nothing contained

in the Bill should "deprive any person of any right of property or other private right except as hereinafter expressly provided." Then, in the latter part of clause *(c)* of section 5, it was enacted that the limits of a port to be laid down were "subject to any rights of private property therein;" and by section 6 the Local Government was empowered from time to time, with the like sanction, and subject to the rights referred to in section 5, to alter the limits of any port. Certainly it had been the desire of the Committee to protect in the fullest manner the rights of private owners, and it appeared to him that this was sufficiently done in the Bill.

The Hon'ble MR. BULLEN SMITH having made one or two observations on the last occasion upon the first two points which had been referred to by the hon'ble and learned Mover of the Bill, thought it would not be right for him to let this meeting pass by without expressing his entire satisfaction at the changes which had been made; and further he would assure the Council that, in dealing with the question of high-water-mark, they were not dealing with a matter of theory, but that in this particular port of Calcutta at least the difficulty was already met face to face. The Port Commissioners found, some months ago, that it was absolutely necessary to apply to Government for some definition of the term high-water-mark, and altogether apart from this Bill as a general Bill, if the work of the Port Commissioners of Calcutta was to be carried on, it was absolutely necessary for them to receive from the Government some clear definition for their guidance. Since the Council last met he had been looking further into the matter, and it might be satisfactory to the members, as it was to him, to know that the definition which the Select Committee had decided upon, and which he hoped would be accepted by the Council, was quite analogous to that which stood in the Bombay Port Trust Act, where high-water-mark was defined to be the high-water-mark of the monsoon-months; and further it would be satisfactory to the Council to know that in the Mersey River Trust Act the definition was nearly analogous to that given by the Select Committee. The Mersey Port Trust Act said that the point of high-water-mark should be the highest point which the water reached except when driven up by high winds, thereby expressly agreeing with this Council as to unusual and extraordinary tides. He entirely approved of the definition as it now stood, and hoped that the Bill would be passed.

The Hon'ble MR. HOBHOUSE only wished to make a few observations upon one topic which had been adverted to by his hon'ble friend Mr. Sutherland. His hon'ble friend contrasted the definition now found

in the Bill with that which was in the Bill as it was introduced. The point was a perfectly fair one for the hon'ble member to take, and MR. HOBHOUSE was very much at his mercy on that subject. He quite agreed that the present definition included a great deal more ground than the definition in the original Bill did. All that he had to say in answer was that the first definition was a mistake: it was put in without sufficient consideration, and if it was necessary to apologize for such errors, MR. HOBHOUSE must apologize to the Council for this. It was one of those mistakes which were made on the introduction of a Bill; which were made in the stage before discussion, in the stage when the *idola specûs* prevailed. But those were just the mistakes hit in Select Committee, when the Bill was thoroughly threshed out with the advantage of having a number of different minds applied to it, and with the further advantage of the comments of local authorities and of those members of the public who interested themselves in the business. The fact was that he had too hastily taken up the decision given by a Court of Judicature in England without sufficiently looking at the circumstances under which that decision was given. That decision was not a definition of a phrase occurring in any Statute; it was not for the purpose of ascertaining how far the control of the public was to go in any place used for public objects, but was for the purpose of ascertaining and applying the old Common Law expressions, by which the rights of the Crown, not specially in ports, but in the open sea-beach, were said to extend to high-water-mark; and of settling how far minerals belonged to the Crown, and how far to private owners, all along the British shore. The circumstances were entirely different. When you came to construe the expression 'high-water-mark' in the Ports Act, you must construe it for the purposes of the Ports Act, and if you found that the Act gave to the Government great powers of control for the purpose of protecting the public in the use of the port, then you would say—and it was the duty of a Court of Justice to say—that the words should receive that one of their natural constructions which would afford the full amount of protection aimed at by the Act. His belief was that, if the Act of 1855 was now to be construed, it would not be construed in a less extended way, but might be construed in a more extended way, than was done by the Bill.

He mentioned at the outset that no one had come forward to say that the principle laid down in the Bill was an unreasonable one. He would add that in cases like this, where property was at stake, it was by no means uncommon for those who were asserting the rights of private property to take a legal opinion as to the incidence of the existing law and the rights which they had

under it. We had no such opinion here; the riparian owners here had not consulted any lawyer as to the meaning of the expression 'high-water-mark' in the Act of 1855, or else, if they had, they had not communicated to the Council the result of that consultation. Moreover, if we took the more contracted limit provided by the Bill as introduced, we should find that, in point of fact, powers were exercised beyond the limits allowed by that definition, and the definition now taken was, so far as he knew, in accordance with the facts, and it was certainly more in accordance with the facts and a more accurate definition than the one adopted at first.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill as amended be passed.

His Excellency THE PRESIDENT said :—"In my judgment this is a measure which the Council may pass with confidence. The subject-matter is of considerable importance. To preserve ports and harbours from injury and encroachment, and to regulate their use, are among the most obvious functions of Government. In India, as in other countries, these duties in regard to ports of any considerable importance are usually delegated to public bodies, to whom certain legal powers are given. Here in Calcutta the duty, as I believe, has been very well performed by the Port Commissioners, and from what I have seen and from what I have heard, the arrangements of the port are highly creditable to the Commissioners and to the Hon'ble Mr. Schalch, who has occupied so long the office of Chairman. The Bill we are about to pass places the law on the subject of ports and port-dues upon a sound and intelligible basis. It is now to be found scattered throughout a variety of enactments, and in the second schedule of the Bill we are about to repeal seventeen Acts which now deal with the subject.

"From my experience in Parliament at Home I can fully appreciate the difficulty of consolidating and amending the law on any subject of importance. It is a work of great labour and responsibility, of which much notice is not taken, but which is of the highest benefit to those affected by the law, for, by such consolidation, their duties and responsibilities are placed clearly before them. It has been the constant aim of the Legislative Council of the Governor General of India to pass from time to time measures of consolidation and amendment of the law. My hon'ble and learned friend Mr. Hobhouse has continued with great success the work of consolidation which he found in

progress when he succeeded to the office of Law Member of Council. Many measures of consolidation have been passed within the last few years. I have obtained a list of those measures, and I find that since my hon'ble and learned friend Mr. Hobhouse assumed his present office, eighteen Acts of the Legislative Council of the Governor General have been passed for the purpose of consolidating and amending the law. In these Acts twenty-one Statutes of the Imperial Parliament of England have, under the powers given to this Council, been repealed so far as they affect India; one hundred and sixty-seven Acts of the Indian Legislative Council have been repealed, besides one hundred and fifteen Regulations which had the force of law. The effect, therefore, of passing these eighteen measures of consolidation has been to repeal three hundred and three Laws and Regulations, and the eighteen now on the Statute-book stand in the place of the three hundred and three. A great deal has been done in this direction; something more remains to be done, and I do not doubt that my hon'ble and learned friend will continue to direct his attention to this subject.

"I think it is only right and fair to express the sense which I am sure the Council entertain with me of the services rendered in preparing this Bill and others by the learned Secretary in the Legislative Department, with whom the real work of consolidation must of course naturally rest, who has carried it on with great zeal and remarkable ability, and to whom it comes, as I know, as a labour of love. Contrary to the feeling which is supposed to animate some lawyers, our learned Secretary desires to see the law made as clear as possible to those whom it affects."

The Motion was put and agreed to.

PANJÁB COURTS AND OFFICES BILL.

The Hon'ble SIR DOUGLAS FORSYTH introduced the Bill to amend the law relating to certain Courts and Offices in the Panjáb, and moved that it be referred to a Select Committee with instructions to report in six weeks. When he asked leave to introduce the Bill on the last occasion, he had explained what the object of the Bill was, and he had nothing to say now. The Bill was a short one. Section 2 repealed section 20 of the Panjáb Courts Act only for the purpose of further extending the powers of the officers to whom the Executive Department had contemplated to give certain powers for the purpose of trying suits in the appellate and original Courts.

The Hon'ble MR. ELLIS had no intention of opposing the motion before the Council. But he desired to say a few words lest it might be supposed

by his silence that he considered the scheme to which the Bill proposed to give effect the best possible one which could be devised for the purpose. He gathered from the speech of his hon'ble friend Sir Douglas Forsyth that he was not altogether without doubts on the subject himself, and if MR. ELLIS was correct, he believed his hon'ble friend only shared with a great many others the opinion MR. ELLIS held in the matter. He regretted his hon'ble friend was not able to bring in a Bill to give effect to a more thorough separation of the judicial and executive services in the Panjáb. He was quite convinced that the fear which existed in some quarters, that a separate judicial service in a country where a strong Government was desirable, could not be kept in subordination to the Executive, was not one which had any foundation: means might easily be devised for keeping the two branches in their proper places. In fact there was already a distinction with regard to the relations which the Chief Court of the Panjáb held to the Government, as distinguished from the relations which the High Courts of other provinces held to their Governments. To his mind it was clear that the combination proposed under the new system was one which, in the present state of the Panjáb, would be to the eye only. There must, in the present state of business, be a division of labour. The only difference under this scheme would be, that persons who by taste and qualifications were better adapted to one particular class of work would be dealing with both kinds of work. Moreover, the difficulty experienced before, and which the Bill was intended to remedy, would remain, namely, the difficulty of working the Chief Court in harmony with the Executive; whereas in the other scheme both difficulties would be avoided. MR. ELLIS had great doubts whether the proposed scheme would work; but he hoped the Council would give effect to the Bill so as to try what had been decided upon by the Government, though he regretted that this scheme was to be carried out, instead of the one which he desired to see, involving a more complete separation of the judicial and executive services in the Panjáb.

His Excellency THE PRESIDENT said:—"There can be no doubt that this is one of the most difficult problems which the Government of India has to consider. As my hon'ble friend Mr. Ellis has mentioned or indicated, some years ago the opinion of the Government of India was expressed to the effect that the time had arrived for the complete separation of the judicial and executive services in the Panjáb. The Government at home expressed a doubt whether this course should be adopted, and I was instructed shortly after my arrival in India to take the subject into consideration. I had the advantage in the autumn of 1872 of conferring with the Lieutenant-Governor of the Panjáb, and almost every one of the officers upon whose opinion the greatest

value is to be attached in that province, both from their ability and their position, and I found the balance of opinion to be decidedly against the separation of the judicial and executive branches of the service at the present time. Having that opinion before them, the Government of India decided not to recommend a complete separation, and the measure which has been subsequently adopted with the approval of the Secretary of State in Council, has taken a course between a complete separation and the entire amalgamation of the duties which previously existed. The Bill is brought before the Legislative Council in order to carry out a portion of the executive arrangements which have been thus decided upon.

"Although I quite admit that there are difficulties in the question, and that there are arguments to be used in favour of an immediate and complete separation of duties, I must say that the balance of argument to my mind, and in the opinion of the Government of India, is in favour of not making so great a change at present."

The Motion was put and agreed to.

PROBATES AND LETTERS OF ADMINISTRATION BILL.

The Hon'ble MR. HOBHOUSE moved that the Reports of the Select Committee on the Bill to amend the law relating to Probates and Letters of Administration, be taken into consideration. This Bill had been introduced last November for the purpose of extending the local area over which the grant of probate operated; and the opportunity was also taken of giving to certain persons who had paid too high a Court-fee on probates and letters of administration the right to recover the excess. As regards the main object of the Bill, which was the extension of the area of probate, he might say that the Bill had remained unaltered since it was introduced; the Committee had only added to it one or two provisions for the purpose of preventing any clashing between the different High Courts which might grant probates extending all over India. For those provisions we were indebted to the High Court of Bombay, which sent in a very able paper by Mr. Orr, their Ecclesiastical Registrar, a gentleman of great experience in such matters, who had taken pains to study the subject and to send some suggestions which were now embodied in the Bill.

There were one or two further alterations made for the purpose of putting into the Bill a few additional cases in which a remission of the fee should be granted. With those alterations the Bill was republished, and Mr. Orr had

again sent in a paper with one or two practical suggestions which seemed to MR. HOBHOUSE to be very useful. These were not put in the Bill because they were rather matters to be dealt with by the Executive Department than by this Council, and the paper would be forwarded to the Chief Revenue Authorities in order that they might deal with Mr. Orr's recommendations with respect to the fees on probates.

The only other alteration of substance was this. Besides making provision for the remission of the fee when too high a fee was paid, the Committee had introduced a provision taken from the English law for the recovery of the remainder of the fee when too low a one was paid. That seemed to be only fair: if it was just in the one case to allow a remission when too high a fee was paid, it was just in the other to recover the balance in case of the fee paid being insufficient.

They had also altered the shape of the Bill by making it in form what it was before in substance, an amendment of the Succession Act and of the Court Fees Act. For that suggestion they were indebted to the learned Advocate General of Madras, and the Bill would now read as a part of those two Acts, so many sections being inserted in their proper places in those Acts.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to amend the law relating to certain Courts and Offices in the Panjáb——The Hon'ble Mr. Hobhouse and the Mover.

The Council then adjourned *sine die*.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA ;
The 15th March 1875.

Office Supdt. Govt Printing.—No. 779. L. D—19-3-75.—250.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 1st July 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

PANJÁB LAWS ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill for the better administration of law in the Panjáb.

PANJÁB JUDICIAL ADMINISTRATION BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to amend the law relating to certain Courts and Offices in the Panjáb. He said that this was a Bill which was introduced into the Council by their hon'ble colleague, Sir Douglas Forsyth, for the purpose of providing relief for the Deputy Commissioners and the Tahsíldárs in the Panjáb. When Sir Douglas Forsyth introduced it he explained that the intention of the Government was to provide for more separation than now existed in the Panjáb between the judicial and the executive duties of those officers; though it was not their intention to effect such complete separation as existed in more advanced parts of the country. The thing wanted was to appoint other officers having the same judicial powers as the Deputy Commissioners and Tahsíldárs, not to fix their duties by law, but to let the Executive regulate their duties as required

by circumstances from time to time, the intention being that they should perform the judicial work which was now performed by executive officers, so as to leave those executive officers much more time than they had now to attend to executive work. It was found that the amount of alteration that the law required for that purpose was exceedingly minute, for the present Panjáb Courts Act provided that, in a certain state of the judicial business, and for temporary purposes, the Government might invest any other person with the powers of a Deputy Commissioner or a Tahsíldár. Therefore all that was wanted was to give to the Local Government those same powers, not subject to any condition, and not for temporary purposes alone. That was the whole alteration of the law which was proposed. The Bill had now been published for a considerable time. Remarks had been made upon it by local authorities, and the result was that the Select Committee had made one or two merely verbal alterations. The Bill was substantially in the same shape as when Sir Douglas Forsyth introduced it. MR. HOBHOUSE called attention to that because he was about to move that the Bill be taken into consideration and passed. That was the usual course, but it was a course consistent with our rules, only that if any Hon'ble Member considered that the subject was one which required further consideration, he was entitled to object, and that objection must prevail unless the rules were suspended. The Bill had been pending now for some time, and the Panjáb Government were very anxious to begin the new system; and inasmuch as the Council had nothing to consider now, but what they had to consider about three months ago when Sir Douglas Forsyth introduced the Bill, he (MR. HOBHOUSE) thought he was acting within the limits of prudence in proceeding to the ulterior motions.

The Hon'ble MR. HOBHOUSE then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

INDIAN TELEGRAPH BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to amend the law relating to Telegraphs. He said that the reason for amending the present Act was this. The law relating to Telegraphs was formerly regulated by an Act passed in the year 1854, and that Act gave power to the Governor General in Council to grant licenses for the establishment of Telegraphs, and it also gave the Government power to make rules for the conduct of Telegraphs established under those licenses. The Act of 1854 was repealed in the

year 1860, and there was passed Act VIII of 1860 containing the law which now governed the subject. The Act of 1860 repealed the Act of 1854, except as to any license for the establishment of a line of Electric Telegraph granted under that Act, but it did not expressly save the power of making rules for the conduct of Telegraphs which had been established under license granted under the Act of 1854. It gave the Government power to grant licenses under the Act of 1860, and to make rules for the conduct of Telegraphs under those licenses, but omitted to say that the power of making rules under the Act of 1854 was to remain.

The Government had recently been advised by the Advocate General that that power either did not exist or that it was at least doubtful whether it existed, and the Government therefore could not prudently make any such rules. It was necessary that the Government should distinctly have that power, and therefore we proposed to amend the present Act. An opportunity would be taken at the same time to bring the penal clauses of that Act into greater conformity with the Penal Code, which the Council would observe was passed subsequently to Act VIII of 1860, and also to make some of the penal clauses more effective and stringent.

The Motion was put and agreed to.

STRAITS SETTLEMENTS EMIGRATION BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to regulate the emigration of Native labourers from the Presidency of Fort Saint George to the Straits Settlements. He said that in order to explain why it was proper to enact a special measure for the regulation of emigration to the Straits Settlements instead of leaving it to be regulated by the General Emigration Law, he must state briefly the course of events which had brought us to the point at which we stood. There had been going on for a great many years—he did not know how many—but at the least from the beginning of the present century, a considerable emigration of labourers from the Coromandel Coast to the Malay Peninsula. That emigration had been conducted with great advantage to both countries, and had resulted in the settlement of a large Tamil population on the eastern side of the Bay of Bengal. It was a purely voluntary movement on the part of the people, stimulated only by their own interests and wishes; it was not assisted by any law, neither was it impeded by any law till the year 1857.

In that year, however, and again in the year 1859, Acts were passed for the regulation of passenger traffic in the Bay of Bengal. The effect of such enactments was to render the voyage more expensive and to diminish the number of emigrants. To meet the change, the employers of labour in the Straits Settlements adopted the system of employing agents in India to advance money to persons willing to emigrate, and of making contracts with them to serve for a term of years. That system again remained untouched by law until the year 1864, when the first consolidated Emigration Act was passed. By the Emigration Act of 1864, a very curious and quite unintentional effect was produced on the Straits Settlements. It would be remembered that they were then part of British India. But by the definition of the expression "British India" contained in section 2 of the Act, it was not to include the Straits Settlements. Section 3 ran as follows:

"Except under and in conformity with the provisions of this Act, it shall not be lawful to make any contract with any Native of India for labour to be performed in any place beyond British India, or to enable any Native of India to emigrate or to assist any Native of India in emigrating;"

but with a proviso that the prohibition should not apply to the Island of Ceylon. Section 4 said that contracts might be made for emigration to certain places among which the Straits Settlements were not included. And sections 5 and 6 gave the Governor General in Council power to allow emigration to any other place, but only subject to all the provisions of the Act. Now, as he had had occasion to observe before in this Council, the spirit and object of our Emigration Laws was not to assist emigration, but to throw safeguards around it. In fact, they impeded the free course of emigration very much by requiring the observance of a number of formalities, both cumbrous and expensive. He was not now saying that these formalities were otherwise than beneficial, or even necessary, in order to avoid great abuses. He was not discussing that point now. All he now said was that, as a matter of fact, the law did impede emigration to places beyond British India.

Well, then, the legal position in which the Straits Settlements were placed by the Act of 1864, was a very unfortunate one. Emigration to Ceylon, which was not in British India, was left wholly unrestricted. Emigration to British Burma, again, was left wholly unrestricted. If the emigrant wanted to go to Tenasserim, the law had nothing to say against it; and nobody interfered with him. But if he wanted to go to Penang, which was not beyond British India as Ceylon was, and was practically at no greater distance than Tenasserim, every

body was absolutely forbidden under heavy penalties to assist him. He could not be assisted to emigrate to Penang except after an order of the Governor General in Council, and then only subject to all the safeguards which were thought necessary for a voyage to South America. Now he had said that the effect thus produced was unintentional, and he said so because it was impossible to suppose that such a thing would be intentionally done in entire silence both on the part of the Government of India and this Council on the one side, and on the part of the inhabitants of the Straits Settlements on the other side. Moreover, the origin of the mistake was easily discerned. There could be little doubt that it was produced solely by the circumstance that the Act contained a fictitious and unreal definition of the expression "British India", and that Nature, who though thrust out with a pitchfork would constantly reassert herself, resumed her dominion over the draftsman's mind at a later stage of his work. In fact, so little was the result intended or known that for fully six years after the passing of the Act the system of emigration that he had mentioned went on without alteration, and without anybody remarking that it was wholly illegal.

The Act of 1864 was repealed in the early part of the year 1871, and was replaced by the Act of that year, which now constitutes the law regulating emigration to places beyond British India. The Straits Settlements had then ceased to be part of British India. But the Act of 1871 made no alteration in their legal position: on that point it simply left the Act of 1864 untouched; and it was clear that the existing anomaly was never brought to the notice of the Government of India, though a controversy about it had arisen in the Presidency of Madras under the circumstances he was about to mention.

It was in the year 1870 that a Madras Magistrate, believing that a system of kidnapping Indian peasants for the Penang market had been set on foot, drew attention to the state of the law, and actually commenced some prosecutions for penalties. The Madras Government then deputed Mr. H. J. Stokes, the Sub-Collector of Tanjore, to enquire into the matter, and he sent in a very able and careful report, showing that the supposed system of kidnapping did not exist, and that the system which did exist worked with a large preponderance of benefit to the Indian population. In the meantime, the employers of labour in the Straits Settlements represented the injury they would suffer by the stoppage of their supply of labour; the injustice of forbidding to Penang what was allowed to Tenasserim and to Ceylon; and the absurdity of enforcing the same regula-

tions for a long voyage to the West Indies, and for a run of eight or ten days to the Straits of Malacca. Under these circumstances we passed Act XIV of 1872, which merely empowers the Governor General in Council to exempt the Straits Settlements from the provisions of the General Emigration Act. When he (MR. HOBHOUSE) introduced the Bill, he intimated that arrangements would be made between the Government of India and that of the Straits Settlements to put the system of emigration on a definite footing, but that time was necessary for the arrangement of details, and that in order not to disturb the industry of the Straits Settlements, it was necessary to leave the matter for a while in the hands of the two Executive Governments. Well, on that footing the matter had rested ever since. It had been decided that in order to secure the well-being of the emigrants, an ordinance must be passed by the Straits Settlements Legislature; and he believed that the provisions of that ordinance had now been put into a shape satisfactory to the Government of India, if indeed it had not actually passed into law.

On our side we had to frame such safeguards as were deemed necessary to throw around emigration to the Straits Settlements. He confessed he was in hopes that when a sufficient law had been passed on the other side of the water, nothing would have been found necessary on our side beyond the mere removal of the shackles placed on the emigration by the Act of 1871. But the Madras Government, who had the local knowledge necessary for a due understanding of the matter, and on whom lay the responsibility of duly protecting their subjects, did not think so. They were of opinion that, though a great deal of machinery required by the General Emigration Act might be dispensed with, some was still necessary to provide against abuses and disorders. Indeed, it was not the emigrant only who required protection; the employer of labour was liable to be cheated by the recruitment of infirm persons, or by the substitution of such for sound recruits in their passage to the ship that conveyed them away.

He believed he had now explained why it was necessary to have a special law to regulate this particular province of emigration. The Council were aware that the same necessity had been found in other provinces of the same wide subject, according to the special circumstances affecting them. The transit of labour between Bengal and Assam had its special law; that between Madras and Ceylon had its special law; and if Hon'ble Members would cast their eyes on the item No. 8 in to-day's list of business, they would see that a Bill was before the Council for making a special law as between British Burma and the rest of India. The special circumstances as between Madras and the Straits

Settlements were the short distance, the long-standing continuance of the traffic, and the consequent numbers of the population already drawn from Madras, among whom the emigrant would find himself not wholly a stranger. It was premature to speak in detail of the contents of the Bill; that would be more properly done when he introduced it. He had already indicated its general principle, namely, the allowance of emigration under as few restrictions as were consistent with security. He thought we might congratulate ourselves on having the assistance in this matter of Sir Andrew Clarke, who had not only been engaged in preparing the ordinance of the Straits Settlements on this subject, but had seen the other side of the shield, and would be able to supply us with a kind of knowledge which he (MR. HOBHOUSE) had always felt that we wanted in discussing questions connected with emigration, namely, a knowledge of the actual life led by the emigrant in the country to which he was conveyed.

The Motion was put and agreed to.

OUDH LAWS BILL.

The Hon'ble MR. HOBHOUSE also moved that the Hon'ble Mr. Eden and the Hon'ble Sir A. J. Arbuthnot be added to the Select Committee on the Bill to declare and amend the laws to be administered in Oudh.

The Motion was put and agreed to.

BURMA LABOUR CONTRACT BILL.

The Hon'ble MR. HOBHOUSE also moved that the Hon'ble Sir A. J. Arbuthnot and the Hon'ble Sir A. Clarke be added to the Select Committee on the Bill to regulate the transport of Native labourers to British Burma, and their employment therein.

The Motion was put and agreed to.

The Council then adjourned to Thursday, the 15th July 1875.

SIMLA,
The 1st July 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla,—L. D.—5-7-75.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 15th July 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble Ashley Eden, C. S. I.
The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.
Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.
The Hon'ble T. C. Hope.

NEW MEMBER.

The Hon'ble MR. HOPE took his seat as an Additional Member.

PANJÁB LAWS AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill for the better administration of law in the Panjáb be taken into consideration. He said that the Council were aware that although this Bill had rather a grandiloquent title, its object was merely to give the Government of the Panjáb greater power for making regulations for village-watchmen and police. The subject was one which was not thought of sufficient importance to handle when the Panjáb Laws Act was passed. He had explained to the Council, once or twice, how the Panjáb stood in respect to legislative matters, and how it was necessary, since the passing of the Indian Councils' Act, for the Panjáb Government to come to this Council for any additional legislative powers that it might require. The present Bill, since its introduction, had been

published for several months. The remarks that had been made upon it had not induced the Select Committee to make any but verbal alterations; in fact, hardly any substantial alterations had been suggested, so that the Bill as amended by the Select Committee stood almost exactly in the same position as it stood when it was introduced.

The Hon'ble MR. HOPE said that perhaps Mr. Hobhouse would be so good as to inform him for what reasons two suggestions made by the Panjáb Government with regard to the Bill had not been adopted by the Select Committee. One of those suggestions was with reference to the second proviso to section 39A; the other with regard to section 39C. He had no doubt that the Select Committee had good reasons for rejecting those suggestions. The suggestions of the Panjáb Government were to be found in paragraph 6 of the letter No. 892 of the 3rd March 1875, from the Secretary to the Panjáb Government, which was amongst the papers considered in Committee.

The Hon'ble MR. HOBHOUSE said that according to his recollection the suggestion had been discussed, and that a slight alteration had been made. He had not the original Bill in his hands and could not recollect its precise terms.

The Hon'ble MR. HOPE said that his hon'ble friend Mr. Eden had now kindly explained the matter to him, with the facts of which he had not been previously aware. The second suggestion was with regard to retaining the power of the Governor General in Council in the matter referred to under section 39C.

The Hon'ble MR. HOBHOUSE explained that the reason for retaining that power was that the particular class of tax referred to was a new tax. In everything else he believed that the Bill followed the exact practice that had been observed in the Panjáb for a great number of years, but with respect to *kasbahs*, they proposed to have a more elaborate system of police, and they might therefore be obliged to put on a new tax. Now in such cases it was considered by the Government of India best to place some degree of check upon the Local Government, and to oblige them to refer to the Supreme Government whenever they desired to levy a new tax. It would be observed that the words "with the previous sanction of the Governor General in Council" had been transposed. The clause formerly ran so as to make the previous sanction necessary to the exercise of the discretion of the Local Government whether or no to apply Act V of 1861 at all. Now it was not

proposed that the sanction of the Governor General in Council should be required for that exercise of discretion, but when they wanted to put on a new tax for the purpose of paying for that more elaborate system of police, then it was proposed that the sanction of the Supreme Government should come in.

His Excellency THE PRESIDENT observed that that view was in accordance with the policy of the Government of India in the case of all new taxes, whether provincial or local. Whether the tax was called a local or a provincial tax was of no consequence to the person who paid it, and the same dissatisfaction which might be created by the injudicious imposing of new Imperial taxes was also likely to follow the imposition of new provincial or local taxes. It appeared to the Government of India to be essential that a distinct and complete power of control, apart from the more general executive authority of the Government of India over the Local Governments, should be provided for in all Bills relating to local or provincial taxation.

The Hon'ble SIR A. ARBUTHNOT remarked that it seemed necessary that the Government should have the power to determine whether or not a tax was expedient. In the case of most of the other Provinces, where legislation was resorted to, involving taxation, it was the practice to make in such legislation definite and specific provision as to the nature and description of the taxation which was to be levied; and it appeared to him a little doubtful whether in principle it was desirable that the nature and description of a tax, where taxation was sanctioned, should not be specifically provided for.

The Hon'ble SIR WILLIAM MUIR said that the same doubt had occurred to him in reference to clause *(j)* (under section 39A), namely, whether it was in accordance with legislative usage to confer the absolute authority on a Local Government of imposing a tax without any limitation as to the amount of its incidence, nor any condition as to the mode of its assessment. But on making inquiry into the subject, he learned that in this present case, the power in question had long been exercised by the Panjáb Government; and as the Bill simply legalized the existing practice, he had withdrawn the objection.

The Hon'ble MR. HOBHOUSE remarked that it had been the practice which, he believed, had prevailed since the acquisition of the Panjáb, and that it was in accordance with the law. When we acquired the Panjáb, the orders of the Government were the law, and they had since been expressly legalized by the

operation of the Councils' Act. This state of things therefore was quite legal, and the Bill only proposed to continue it. But in point of fact there was a practical limitation of this tax, and a very substantial one, namely, the extreme smallness of the object for which alone it could be levied. It could only be levied for village-watchmen and the things connected with them. That was a minute matter and might well be left where it stood, in the hands of the Local Government.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

BURMA LABOUR CONTRACT BILL.

The Hon'ble MR. HOBHOUSE presented a preliminary Report of the Select Committee on the Bill to regulate the transport of Native labourers to British Burma, and their employment therein. He said that there was no motion before the Council with respect to this Report, and they did not propose to proceed with the Bill until there had been ample time for the Local Governments, and that portion of the public which was interested in the matter, to consider it; in fact, in all probability, it would not be desirable to proceed with the Bill until the Council got to Calcutta. But the Select Committee had introduced some very large alterations into the Bill, and those alterations again depended upon a most essential change in the administrative and financial system which underlay the whole of the legislation on this subject, and therefore it would be convenient if he now gave to the Council a short explanation of the nature of those changes.

It was now very nearly two years ago since he introduced this Bill into the Council. At that time there was no system whatever of assisted emigration to British Burma, but it was conceived that the owners of property in British Burma who stood in need of labour were prepared to advance funds for the purpose of importing labourers from peninsular India into British Burma, looking, of course, to be repaid by the value of the labour. In particular there was one large owner of property—the British Burma Company—who expressed a strong desire to have a law which would secure to them the fruits of the expenditure that they were prepared to make upon the importation of labourers into British Burma. Upon that footing a Bill was prepared, following in most of the essential respects the other enactments that we had upon the

subject of emigration, that was to say, securing certain safeguards for the proper conduct of the emigrants down to the sea-shore, for their carriage across the sea, and for their protection against ill-treatment when they arrived at the place of labour; and, on the other hand, securing to the person that bore the expenses the services of the labourers, putting summary remedies into his hands, and placing penalties upon the labourers in case they violated the terms of their contracts.

Well, the Bill was introduced and it was published, and it was intended to proceed with it after the Council got to Calcutta, because it was a matter that affected the Local Governments both of Bengal and Madras. But before any further step was taken there came the Bengal famine, and with the famine came a new plan of importation of labourers from Bengal into British Burma at the expense and under the direction of the Local Government. When that undertaking was commenced the Local Government of British Burma, over which his hon'ble friend Mr. Eden then presided, applied to the Council to stay their hands. Accordingly the progress of the measure was suspended for a considerble time. During that time the new plan came well into work, and the working of it had been considered quite satisfactory by the Government.

Now the Council of course were aware that there were different systems of emigration prevailing in different places. In most of those countries which, as regards the Government of India, were foreign countries, the system was to make the emigrant contract with the Government and for the Government to assign the emigrant to some particular private employer for the full term of his contract. In Assam, which was both near at hand to us and also was under our dominion, the practice was for the emigrant to enter into a direct contract with some private employer, and the Government had nothing whatever to do with the disposal of his labour. In the Straits Settlements, which were also near at hand to us, and which used, until quite lately, to be part of our dominions, the same practice prevailed as in Assam.

With respect to British Burma, as the two circumstances that he had mentioned of proximity and uniformity of dominion were the same as they were in Assam and as they used to be in the Straits Settlements, the circumstances seemed, in the first instance, to point to the adoption of the same system that prevailed in Assam, and accordingly the original Bill was framed upon that footing. But there were two reasons why in the case of British Burma we should rather adopt the system of contract with the Government. One reason—a

very important one and probably of itself conclusive—was that the system had been started,—it existed,—it was working on a considerable scale and in a satisfactory way. The other reason was that the conditions of labour in British Burma were not the same as those that existed in other countries. In Assam, and also in our Colonies, the labourer directly he got into his new country was set to work for the whole term of his contract upon some plantation of tea, cotton, coffee, sugar, or some other product; but in British Burma the Government itself was the principal employer of the labourers who went there, and of those who were not employed by the Government, the majority were set to work in the towns or at some labour other than field labour. Well, then, he would state the system proposed for British Burma, and perhaps his hon'ble friend Mr. Eden, who knew more about the country than he did, would be good enough to correct him if he made any misstatement or any material omission.

It was proposed that every emigrant should enter into a contract with the Government to labour for a certain term of years, or, to put it more technically, he was to contract with the Secretary of State in Council who, for all purposes of property and contract, represented the Indian public. The contract would be regulated by section 13 of the Bill, which provided for the term of his engagement, which in no case was to exceed three years; the quantity of his work, which in no case was to exceed six days a week or nine hours a day; and the quantity of his wage, which in no case was to fall short of Rs. 7 a month. Then by section 35, which might be termed the corner-stone of this Bill, every emigrant who had entered into such contract, when it had been ratified by the Emigration Agent, was bound to serve according to the terms of his contract in the place and mode in which the Local Government, that was the Chief Commissioner of British Burma, should appoint. The expenses of conveying the people to their place of labour were intended to be borne in the first instance by the Local Government of British Burma, and they would look for repayment to the value of the labour they got, or to some private employer who might desire to have the services of the labourer for a greater or less period of his contract. Every labourer who throve and succeeded would have to pay in some shape or other the expense of his own transit to his place of labour, and also something more which should represent the general expense of carrying the machinery of the Act into effect, and the expense of the conveyance of those persons who died or who fell sick, or in some way or other failed to produce any profit. In fact, in those operations, as in all operations on a great scale, the successes must pay for the failures.

Now let us suppose that the cost of transit to Rangoon was Rs. 20. He was giving only imaginary figures, but he believed they were tolerably near the mark. Well, Government would want to be repaid this Rs. 20 and also something more which would represent the man's fair share of the general expenses. What that something more should be, would be ascertained by experience, somewhat roughly perhaps, but yet with tolerable accuracy. Let us suppose it to be Rs. 5. Therefore the man would have to pay Rs. 25 before he cleared scores with the Government. Now he might be dealt with in two different ways: either he might be assigned to somebody who wanted his services and would take him for a greater or less time and pay down the Rs. 25, or some portion of the money according to the period of the engagement, or he might be retained in the service of Government and the excess of his earnings according to the market-price of his labour over the contract-price of it would be placed to his credit; that was to say, the Government might say to him "you have contracted to serve us for Rs. 7 a month, your labour is worth Rs. 10, we will place Rs. 3 to your credit, or we will pay you Rs. 8 and place Rs. 2 to your credit, and whenever it comes to pass that Rs. 25 stand to your credit, then you shall be a free man." But then one might say, if it was the fact that the market-price of labour so much exceeds the contract-price, every good labourer would repay the Government over and over again before he had completed the three years of his contract. No doubt that was so, and if it should happen that a good labourer contracted to serve for three years, which however, be it observed, was the maximum and not the necessary term of his service, and that he worked all that time for Rs. 7, which however was the minimum and not the necessary amount of his wages, in that case the Government would be repaid long before the three years were out. But in order to meet such cases it was proposed that whenever the amount that was settled as the redemption price was placed to the credit of the labourer, that moment he might redeem his contract and become a free man. In fact, the Government wished for nothing so much as for free men instead of contract labourers, and they proposed to give every species of facility to the early redemption of contracts upon proper terms.

Of course the principle of the Bill could not be changed in the way Mr. Hobhouse had described, we could not change the whole motive power of the machinery we created, without great modifications in the Bill itself. The Council would find the Bill very much shortened and simplified, and they would also find one or two questions, which he had mentioned when he introduced it as puzzling questions, entirely got rid of. He would briefly state the main features in which the original and amended Bills remained still the same and those in which alterations had been made by the amended Bill.

With respect to the treatment of emigrants from the time they left their own homes to the time they got on board-ship for British Burma, there was no material difference between the two Bills. The Bill still required a written contract before the emigrant left his home; it still required a local medical examination for the purpose of testing the man's fitness for labour; it still required a local examination by the Magistrate in the presence of the recruiter for the purpose of testing the man's knowledge of the undertaking into which he had entered; it still required a formal registration of the contract, and made that registration the foundation of all ulterior proceedings; and it still required due attention to the wants of the emigrant on the part of the recruiter, the Emigration Agent, and the Medical Inspector. Again, when the man arrived at the place of his labour, there was very little difference between the original and the amended Bills in the requirements they made for the purpose of securing to him due protection against any imposition or ill-treatment. But inasmuch as the Local Government would be entirely responsible for his conveyance from peninsular India to his place of labour, it was proposed to omit a great number of detailed requirements which were in the original Bill respecting the period of transit, because those matters might now be provided for much better either by general rules or by simple executive orders.

Of the questions of which he said we had got rid, perhaps the most puzzling was the question of labour-rate. The original Bill provided that the Local Government might levy a rate upon all employers of emigrants not to exceed Rs. 5 per emigrant, and the rate might be levied yearly. There were considerable difficulties in fixing the maximum amount of that rate, and perhaps greater difficulties in fixing its exact incidence. It was necessary because we were proceeding on the footing of a direct contract between the emigrant and the employer, and the employer would only pay the expense of the actual transit of each person; whereas there was also the expense of the general machinery to be provided for, and the Government which provided that machinery ought to be reimbursed in some way. But now, seeing that every contract was to be made with the Government, and that the private employer would get no labour except by an assignment from the Government to himself, it seemed more proper and certainly would be much easier to make him pay in one lump sum the expense of the transit of the labourer he took, and the percentage on it to cover the expenses of the failures and of the machinery. That would be provided for in the first instance in the assignments, which of course would differ in the charges they imposed upon the employer according to the length of time for which he took the labourer. After a time it would probably be possible

for the Local Government to fix upon some general rules to regulate those payments, and the Bill gave them power to do so.

Another matter of considerable difficulty was the terms upon which contracts should be redeemed. The original Bill gave a scale or tariff on which every emigrant should be entitled to redeem his bargain with his employer, so many rupees for the first year, so many for the second, so many for the third. It was a very rough way of ascertaining the price of redemption, and it met with a good deal of remonstrance from our friends the British Burma Company as representing the employers of labour. But now he had explained to the Council the very simple mode in which it was proposed that as between the labourer and the Government the contract should be redeemed. Of course, if the labourer was assigned, he must redeem the assignment as well as the contract, and in the case of very short assignments probably the simplest plan would be that they should be worked out. In the case of long assignments it would be better to give the man some power of redeeming them, and we proposed that the Inspector of Immigrants in British Burma should decide whether the assignment should be redeemed or not. If not, the emigrant must work out his assignment. If it was to be redeemed, then it would be redeemed on the terms which would form part of the original bargain between the employer of the labourer and the Government, and which might perhaps after some accumulation of experience be reduced to rule.

Another difficult matter related to the return-passage of the emigrant. It had been our general policy to insist that the emigrant's contract should always contain a provision entitling him to a free return-passage, that is to say, one at the expense of his employer, whenever the term of his contract was worked out. However suitable that might be to other places, it was certainly not suitable to the system of short contracts and very easy redemptions which we proposed for British Burma. In point of fact the existing contracts under which labourers at this moment were going from India to British Burma did not provide for any such thing. On the contrary, it had been the policy of the Government of British Burma to offer the labourers grants of land for the purpose of inducing them to stay in their new country, instead of a money bonus for the purpose of inducing them to return to their old homes.

There were minor alterations in the Bill, some depending upon the essential alteration of principle he had mentioned, and others made because the provisions

of the Bill were found not to be suitable to the circumstances of British Burma. But the Council was not now considering the Report, and he need not go into those matters in more minute detail. He thought he had stated enough to enable the Council, and those outside who might take an interest in the matter, to grasp with facility the differences which existed between the original and amended Bills and the reasons upon which those differences rested.

The Hon'ble SIR WILLIAM MUIR said that there was one question he would like to ask his hon'ble friend Mr. Hobhouse. For sufficient reasons, the section providing for the return of the labourer to India had been properly removed from the new Bill as it now stood. But there was one exception, and that was with regard to disabled labourers. The Local Government, as he understood from section 60, should either provide for the employment and support of the disabled labourer and his dependents, or return them to the place at which they were registered. When the labourer was disabled permanently, and there was no means for his support or employment, he (SIR WILLIAM MUIR) would ask whether it would not be more suitable that the labourer should be provided with the means of returning to his home, rather than to the place of registration.

The Hon'ble MR. HOBHOUSE said that the expression suggested by Sir William Muir was the more correct expression. But as it was only a matter of a few words, it was hardly worth while altering the Bill, and it would be sufficient if the Secretary made a note of it for the Select Committee, to whom the Bill would come back again.

His Excellency THE COMMANDER-IN-CHIEF enquired why no provision was made for returning emigrants.

The Hon'ble MR. HOBHOUSE said that it was because the Bill contemplated a system of very short contracts. We contemplated a contract which should never be for more than a term of three years, and which in many cases would be less. Moreover a good labourer might redeem that contract within a year. The policy of the Government was to take a population into this very thinly-peopled country, and the Government of British Burma at this moment were offering grants of land to the emigrants in order to induce them to settle in British Burma. Now it would be an absurd thing if with one hand we offered inducements to the emigrants to stay in the country, while with the other we held out a money bonus to them to return home. Such a course would be both inconsistent and against our policy.

His Excellency THE COMMANDER-IN-CHIEF observed that it seemed to him that the emigrants might possibly not have intentions of settling in British Burma, and that if the rate of wages was only Rs. 7 a month, it would be a perpetual exile to a man, because he could never save a sufficient sum out of Rs. 7 a month in a foreign country to repay the Government and to defray the expense of his return home.

The Hon'ble MR. HOBHOUSE said that it was the difference between the contract-price and the market-price which would repay the Government.

His Excellency THE COMMANDER-IN-CHIEF remarked that the Bill as now framed seemed to indicate the possibility of a considerable population being thrown into British Burma who did not contemplate being for ever exiled from their own country and settled in British Burma, and of being left there without the means of returning.

The Hon'ble MR. EDEN explained that although the cost to emigrants of returning from the Colonies was Rs. 40 or Rs. 50, steamers left British Burma sometimes two or three times a week, which would bring back emigrants occasionally as cheap as Rs. 2 or Rs. 3 a head. The instances, he thought, would be very exceptional in which the emigrant could not afford to pay this sum, having regard to the fact that every labourer who chose could with ease earn eight annas a day. The case with regard to Colonial labourers was very different, as they had to be sent on emigrant ships a long voyage under special arrangements at a considerable cost per head.

His Excellency THE COMMANDER-IN-CHIEF said that the only other remark he wished to make was that the fixing of nine hours a day by law was rather a long period for labour. Eight hours was considered the usual working day.

The Hon'ble MR. HOBHOUSE said that was the time which was settled in the Department which attended to those matters, and that particular part of the Bill was framed by a gentleman—Mr. Geoghegan—who had great knowledge of the subject, and who was very vigilant with regard to the protection of emigrants. The point was not one on which Mr. Hobhouse himself possessed personal knowledge.

INDIAN TELEGRAPH BILL.

The Hon'ble MR. HOBHOUSE then introduced the Bill to amend the law relating to Telegraphs in India, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that this was a Bill which he obtained leave to introduce at the last meeting of the Council, and he then explained the necessity for the measure. It was to remove all doubt with respect to the power of Government to make rules for the conduct of Telegraphs licensed under the Act of 1854. That object was provided for by section 2 of the present Bill. The rest of the Bill, as he had already mentioned, so far as it altered the present law, consisted merely of penal clauses. The present Act was passed shortly before the Penal Code, with which it was not quite in accordance. It was now to be brought more into accordance with it, and several sections we found might be omitted altogether on account of the passing of the Criminal Procedure Code. He thought that the only section to which he need draw attention as embodying any important principle was section 15. That section provided for the increase of the police force if an act causing wrongful damage to any Telegraph was repeatedly committed in any place, and that the cost of such additional force should be charged upon the inhabitants of such place. Whether, under the present law, it would be competent to do that or not, MR. HOBHOUSE was not quite certain. It seemed to him that it would. The principle was contained in the Police. Act V of 1861, one section of which gave the Local Government power to employ additional police in any part of the general police district in which, from the conduct of the inhabitants, they might deem it expedient to increase the number of the force. That was exactly the same principle which we proposed to apply to the Telegraphs. We only proposed to make it clear that it was capable of that particular application, and he did not suppose that any one would dispute that the instance in question would be a very beneficial application of the general principle.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE moved that the Bill be published in the official *Gazettes* in such languages as the Local Governments might think fit.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. HOBHOUSE moved that the Hon'ble Mr. Hope be added to the Select Committees on the following Bills :—

To consolidate and define the law relating to the settlement and collection of land-revenue in Oudh.

For declaring what laws are in force in Oudh.

To consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers.

To limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the land-revenue.

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble MR. HOBHOUSE also moved that the Hon'ble Mr. Eden be added to the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to amend the law relating to Telegraphs in India,—the Hon'ble Sir Andrew Clarke, Sir Douglas Forsyth and Mr. Hope and the mover.

The Council then adjourned to Thursday, the 29th July 1875.

SIMLA,
The 15th July 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla,—L. D.—17-7-75.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 29th July 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble Ashley Eden, C. S. I.
The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.
Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.
The Hon'ble Sir Douglas Forsyth, K.C.S.I.
The Hon'ble T. C. Hope.

LAW REPORTS BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill for the improvement of Law Reports. He would explain to the Council, in a very few words, the reason for the introduction of that Bill. The Council would remember that an Act was lately passed with the object of improving Law Reports. One of the sections of that Act was framed for the purpose of giving to decisions of High Courts an extent of authority which they did not possess at the present moment. Well, the Secretary of State, with whom rested the duty of advising the Crown to disallow whatever laws he thought inexpedient, considered that that provision might lead to some embarrassment, and accordingly while he assented to, and approved of, the rest of the measure, he had intimated that he could not allow that particular portion of it to become law. He, however, suggested that, instead of disallowing the whole Act, we should ourselves repeal it, and re-enact such portion of it as was unobjectionable. The Bill he (MR. HOBHOUSE) proposed to introduce was simply for that purpose, and he

presumed that the Council would have no objection to re-enact portion of that which they had already enacted.

The Motion was put and agreed to.

REFORMATORY SCHOOLS BILL.

The Hon'ble SIR A. ARBUTHNOT moved for leave to introduce a Bill to provide Reformatory and Industrial Schools. He said that the subject of the establishment of reformatories had, as the Council were aware, engaged the attention of the Government of India and of the various Local Governments for several years. So far back as 1861, the framers of the Code of Criminal Procedure included in that enactment a section which provided that, in the case of juvenile offenders, it should be competent to the Criminal Courts, on the occasion of sentencing any person under the age of 16 years to imprisonment for any offence, instead of directing that he should be confined in a criminal jail, to direct his confinement in a reformatory.

This law was still in force. Its defect had been found to be that while it had some advantage over the previous law in that it admitted of the separation of juvenile offenders, where a reformatory was available, during the period of their sentences, from adult criminals, still, as a general rule, the periods of those sentences were so brief that very little could be done to carry out the objects with which reformatories were established.

This blot in the legislation of 1861 very speedily attracted the attention of one of the Local Governments, and it was to the credit of the Government of Bombay that, in the year in which the Code of Criminal Procedure became law, they framed a Bill for supplementing the provisions of the Code in that respect, and for providing for the detention of juvenile offenders for periods which might be sufficient to admit of a reformatory system being duly carried out. That Bill, however, was disallowed by the Governor General, and a Bill subsequently framed also by the Bombay Government in the following year shared a similar fate. The main reason given for the disallowance of the former Bill was that it imposed certain penalties which were inconsistent with those imposed by the Penal Code, and that that was a power which it was not desirable to entrust to a local Legislature. The disallowance of the Bill submitted in 1863 proceeded upon very similar grounds. In 1867, the question again came before the Government of India. Representations were made from various quarters as to the want of an effective system of reformatories. The question was

very fully considered by the Government, but at that time they did not see their way to any legislation of the description which it was now proposed to resort to. The views of the Government of that day were essentially different from those now entertained on this subject. Objections were felt to the establishment of reformatories in India which at that time were considered to be insuperable. A circular, however, was issued to the various Governments drawing their attention to the necessity of providing more effective means than then existed in the various central jails and other prisons, for separating juvenile from adult offenders. This reference elicited a representation from the Government of Madras, in which Lord Napier and Ettrick entered very fully into the question, and urged very strongly that the Local Government should be permitted to establish a reformatory at Madras. Lord Napier's proposition did not go so far as the proposals made by the Bombay Government in 1862 and 1863; it did not provide for any change in the law; it merely went to the extent of requesting that the Local Government might be permitted to establish a reformatory in which practical effect should be given to the provisions of the Code of Criminal Procedure. For reasons very similar to those which had led the Government of India in their circular on the subject of providing for the separation of juvenile offenders in jails to object to any attempt at the establishment of distinct reformatories, the Government of India rejected Lord Napier's proposition.

Perhaps he might mention here one or two of the objections which were raised at that time, and, with the permission of the Council, he would read the answers on these points which were given by Lord Napier. One of the objections was that the effect of the establishment of a reformatory would be, to an undesirable extent, to remove juvenile delinquents from the influence of their parents. Another objection was that a reformatory, in the sense in which the term was used in Europe, and in the sense in which those institutions were managed and carried on in England and other civilized countries, could not be effectively managed in India in consequence of the difficulty, in fact impossibility, of imparting sound, moral and religious teaching in an institution of that description in this country. Now, on the first point, in fact on both points, the remarks made by Lord Napier in the minute submitted to the Government of India appeared to him to be deserving of every consideration. Lord Napier said, with reference to the first point—

"I cannot help remarking respectfully that this feature in the reformatory system, which the Government of India deprecate, is exactly the feature which European philanthropists

desire. It is considered in Europe that one of the greatest benefits which can be extended to the juvenile criminal in most instances is to be separated from early associations and from parents who are often his instructors in crime, and who live by the fruits of his iniquitous industry. Crime is hereditary, it goes down from generation to generation, and the reformatory is the beneficent power that breaks the chain of transmitted guilt which weighs upon a family once embarked upon this fatal course. I cannot state from personal knowledge to what extent criminality is propagated by parental teaching in this Presidency. The ancient murdering and thieving castes are no doubt much broken; still, in the country of Thugs, Maravers, Dundassies, Pullers and Kullers, a hereditary character must be more deeply stamped on crime than in England. The opinion of Captain Drever quoted above is conclusive for Presidency Towns. I cannot but think that maturer reflection, and a particular consideration of the physiognomy and history of crime in India, may induce the Government of India to modify their fourth objection to the institution of reformatories."

On the other point, the difficulty of imparting moral and religious teaching, Lord Napier wrote:—

"The absence of moral and religious teaching in a juvenile reformatory would be undoubtedly a serious want. Religious teaching in connection with the superstitions of India is, of course, out of the question; and it must be conceded that moral teaching loses much of its force when not associated with the influences of Christianity. Nevertheless, I am not prepared to admit that all direct moral teaching must be banished from an Indian reformatory. Some of the principles of morals are common to all civilized nations, and may be impressed on the mind as maxims of prudence and honour. Indian children may be convinced that it is their interest not to steal, though their Gods have not said 'thou shalt not steal;' or they may be taught to aspire to what is high and good. The Muhammadan religion comprises all the elements of morality except one. It would not be difficult to compile books of morals, acceptable to both Hindús and Mussulmans, impregnated with much of the spirit of the Gospel, without its dogmas. But, granting that I am mistaken, and that direct moral teaching is impracticable in an Indian reformatory, there still remains the invaluable force of indirect, insensible, practical discipline—perhaps more powerful than preaching and teaching on the human heart—the habits and lessons of obedience, cleanliness, punctuality, industry and economy which may all conduct the criminal child in India, as well as in England, to a better stage in life."

This representation was, however, ineffectual, and up to this period nothing had been effected in this direction at Madras. At Bombay, however, the Local Government had not relaxed in their efforts, notwithstanding the rejection of the Bills which they submitted in 1862 and 1863.

There were, in the Presidency of Bombay, two institutions which were carried out with objects analogous to those sought to be obtained by the Bill which he now moved for leave to introduce.

One was the David Sassoon Institution. From a recent report, which he had seen within the last few days, he found that during the past year that institution contained no less than 130 inmates and appeared to have been worked efficiently and well. There was also in Bombay another institution, not actually a reformatory, but a juvenile prison, under the direction of the Government, which was maintained at Poona, and which contained some 50 inmates, in which, although the designation of reformatory had not been attached to it and although it laboured under the defect common to every institution of the kind which could be established in India under the existing law, appeared to be effecting some amount of good. He had read a report on this institution by the Inspector General of Jails in Bombay in which he drew attention to the defect to which he (SIR A. ARBUTHNOT) had alluded. The Inspector General said—

"If possible, the sentences of juveniles should be proportioned to their age, e. g., a boy of ten, if sent to the reformatory, should be sentenced to such a term as would enable him to learn his trade, and be strong and independent enough to earn his livelihood on discharge, while a boy of fifteen need only be sentenced to a year or more, as it is not advisable to keep grown-up boys almost men, in the reformatory."

That remark had reference to the defect to which he had alluded, and which defect it was proposed to remedy in the Bill which he desired to bring before the Council.

More recently, the subject had attracted the attention of the Lieutenant-Governor of Bengal, and from the papers which had come before SIR A. ARBUTHNOT, he observed that it had also engaged for some time past the attention of His Excellency the President. Sir Richard Temple had proposed to legislate locally, but on examination of the law, it was found that the Bill which he proposed, and indeed any Bill which could effect the object that he had in view, would interfere with certain provisions of the Code of Criminal Procedure, and that was a Code which, having been passed since the enactment of the Indian Councils' Act, the local Legislatures could not alter or amend. Further, it might be said that the question was essentially an imperial one. It was as imperial as any other question connected with prison discipline, or indeed with any of our penal laws. Therefore it had been determined, with the consent of the Secretary of State, to resort to imperial legislation for the purpose of removing the defect in the existing law to which he had referred. If permission to introduce the Bill were now given, it would be his duty, when introducing it, to draw attention to its leading provisions.

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble MR. HOBHOUSE moved that the Hon'ble Sir Andrew Clarke and the Hon'ble Sir D. Forsyth be added to the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers.

The Motion was put and agreed to.

The Council then adjourned to Thursday, the 5th August 1875.

SIMLA,
The 29th July 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla,—L. D.—2-8-75.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 5th August 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
Major General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble Ashley Eden, C. S. I.
The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.
Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.
The Hon'ble Sir Douglas Forsyth, K. C. S. I.
The Hon'ble T. C. Hope.

INDIAN TARIFF BILL.

The Hon'ble MR. HOPE moved for leave to introduce a Bill to amend the law relating to customs duties and for other purposes. He would explain in a few words the origin of this Bill. About four years had elapsed since the existing tariff values were fixed by Act XIII of 1871, and numerous representations had been made to the Government of India that market-prices had fallen considerably below those values. Regarding cotton-goods especially, the Manchester Chamber of Commerce had stated that the excess in values amounted to an addition of nearly one per cent. to the rates of duty. It likewise happened, in the course of customs administration, that as time went on, it was necessary to make various petty changes by notification, and legal difficulties came to light which could only be removed by legislation. Thus a new customs law became necessary from time to time at no very long intervals. In December 1874, the Government of India appointed a Committee to consider

all these matters. The constitution of the Committee was this: Bengal was represented by the Collector of Customs, Mr. Lane; Madras by the Hon'ble Mr. Dalyell, who had held the post of a Member of the Board of Revenue at that Presidency; Bombay by the Commissioner of Customs and Opium, an appointment held at that time by himself. The mercantile community were represented by the Hon'ble Mr. Bullen Smith, who was a Member of this Council, and Mr. J. C. Murray, the Chairman of the Bengal Chamber of Commerce. The Chamber of Commerce of Bombay was invited to send representatives, but was unable to do so. The Madras Chamber sent a short letter explaining their views upon the principal subjects under discussion, and the Bombay Chamber sent a detailed statement of the tariff values they desired, and also their proceedings at a public meeting, which were very voluminous, and expressed their views on all the points in dispute. The Chairman of the Committee was Mr. Money, Member of the Bengal Board of Revenue. The Committee had made their report, it had been taken into consideration by the Government of India, and the result was the Bill he now requested permission to introduce.

The Motion was put and agreed to.

The Hon'ble MR. HOPE then applied to the President to suspend the Rules for the conduct of business, with a view to the Bill being taken into consideration and passed at the present sitting. The reasons for asking His Excellency to take this somewhat unusual course were, that urgent representations were still being made as to the loss which trade was suffering by the enhanced tariff values; that there was no reason why trade should be kept waiting for any relief as to rates of duty which the Government, with the concurrence of the Council, were prepared to give; and, lastly, that if the Bill were proceeded with in the ordinary manner, there would be, under some heads, loss to the public revenue, and under others a complete paralysis of trade.

His Excellency THE PRESIDENT said that the reasons given by the Hon'ble Mr. Hope for the suspension of the Rules appeared to him to be conclusive. These Bills relating to customs tariffs were necessarily such as could not be circulated to the public previous to their introduction, because the circulation of them would have the effect of disturbing trade. Mr. Hope had also correctly remarked that there was considerable pressure to deal with this question. THE PRESIDENT therefore declared the Rules to be suspended.

The Hon'ble MR. HOPE then introduced the Bill and moved that it be taken into consideration. He added that in doing so he would explain to the Council, as concisely as the subject would allow, the nature and scope of the measure.

Taking first the body of the Bill, the Council would observe that sections 1, 4, 5, 8 and 10 corresponded almost word for word with sections 1, 2, 3, 7 and 8 of the existing Tariff Act No. XIII of 1871. Section 2 of the Bill repealed that Act, and also Act XVIII of 1870, which it was desirable to get rid of and re-enact in the present measure. Section 3 was the old section 4, shorn of the Opium clause, modified to suit the proposed change in the export tariff, and with an addition of 'salted fish,' which he would explain presently. Section 6 was the old section 6, with the addition of the substance of the repealed Act XVIII of 1870, empowering the Government of India to reduce or take off the duties on any particular goods. Section 7 placed in the body of the Bill a proviso regarding rendering unfit for human consumption spirit intended for use in arts, manufactures and chemistry, which existed in Schedule A of the present Act, and added a penalty corresponding with that in Act XVI of 1863, which was the law on this subject for country-made spirit. Section 9 expanded the old Opium clause omitted from section 3, so as to place all the action of Government regarding opium on a clear legal footing. Section 11 was new, and empowered the Governor General in Council to control the excise duties on country-made spirit, with the view of maintaining a proper proportion between them and the duties on imported spirit. Section 12 was the old section 5, with two similar verbal amendments of the Consolidated Customs Act which had been found necessary, and also an important proviso regarding arms. Its object was to enable the Government to deal with arms, ammunition, and military stores, for which a license had been refused, in ways other than sale by auction, which alone was legal at present, and of course could not be resorted to without nullifying the refusal of license.

Turning to the schedules of the Bill, it would be observed, in the first place, that the classification of articles had been entirely altered. Under the orders of the Secretary of State for India, a Committee had met in England to revise the whole of the Indian forms of trade statistics, with the view of bringing them into correspondence with the publications of the Board of Trade. Under the advice of this Committee, a new classified list of all imports and exports had been sent out for adoption, and the classification of the tariff had necessarily to be changed in conformity with it.

He would now explain all changes of importance which were proposed in the substance of these schedules for the approval of the Council—first taking changes in duties, next tariff values, and finally giving an outline of the financial result of the whole.

Commencing with duties which were said to be prejudicial to trade, and with the import side, the most important item was cotton goods and twist. In the course of 1874, the Manchester Chamber of Commerce had made two important representations to the Secretary of State, to the effect that the duty was "absolutely prohibitory to the trade in yarn and cloth of the coarse and low priced sorts;" that it was intended to import into India, American and Egyptian raw cotton in order to make the finer qualities also; that the duties increased the cost to the poor consumer, and fostered a protected trade and new mills, thus defeating their own object and endangering the revenue; and finally, that their "total and immediate repeal" was necessary.

The Tariff Committee, to whom these representations were referred, enquired carefully into them, and found that the duty levied in all India on the coarse goods referred to was only about four lákhs of rupees, or five per cent. of the entire duty on cotton goods, which amounted to about eighty lákhs, and that only half of this sum, or one-fortieth of the whole, belonged to Bombay, where alone there was as yet any considerable local manufacture. The case therefore stood thus, that because one-twentieth of the cotton goods imported were subject to a local competition, which only seriously affected one half of that twentieth, the Government were asked for the "total and immediate repeal" of the nineteen-twentieths of the duty, paid by the remaining cotton goods on which local competition had no present effect whatever. It might of course be said that the present duty was no measure of the injury local manufacture had caused, and that, to estimate it properly, we must take into consideration the quantity of goods which the local mills were now producing, and which it was to be supposed would, but for them, have been supplied by Manchester. But as far as Bengal and Madras were concerned, there was no trace of any injury whatever. In Bombay, no doubt, the mills took to a certain extent the place of increased imports, but the competition of Bombay mills, like their profits, had been greatly exaggerated. After deducting what they made for exportation, and allowing for the extent to which they had displaced the hand-loom weaving of the country, the residuum was not sufficient materially to affect the argument as stated above. The Com-

mittee were therefore of opinion that the case for total abolition, on the grounds on which it was claimed, must inevitably fall to the ground.

There was an alternative scheme put forward by the Chamber of Commerce—not of Manchester but of Bombay—which he would now notice. It consisted in the exemption from duty of only the coarser sorts of yarn and cloth which were subject to local competition. This scheme had, at first sight, a great deal to recommend it, but it was open to two objections: 1*st*, that it was impossible to draw a well defined line between coarse and fine goods; and 2*ndly*, that any line drawn would not only lead to elaborate evasions and frauds on the part of the home manufacturer, who would endeavour to make goods which should just come within the exemption, but would stimulate the local mills to manufacture goods just above the line, and so would enlarge the range of the competition now complained of. The line would never be a steady and permanent one, for it would be necessary perpetually to keep moving it on further and further, higher and higher, until in the end, perhaps, the whole duty would be affected. There were two principles on which a line might be drawn—the principle of value and the principle of description. By the principle of value was meant saying, for instance, that all cotton goods valued at nine, or ten annas, per lb. and under should be exempt. By that of description was meant specifying that certain kinds of cloth, say longcloths, domestics, T cloths, and other coarse grey cloths under 18 × 18 reed, should be free. "Value" was objectionable in that it was not only a matter of opinion but subject to a double fluctuation—one following the market, like a tariff value, and another following the advance to higher and therefore more valuable kinds of cloth in which the local mills would be encouraged. "Description" threw on the Customs officers the onus of deciding whether the varieties of cloth which existed and the new ones, such as with 18 × 17 reed, which would spring up, were within the exemption or not. While fully appreciating the compliment paid to the honesty and intelligence of Custom-house appraisers by those who advocated "description," he did not think that the burden was one which ought in justice to be imposed upon them, or which they would be able to bear to the satisfaction of the mercantile community. As to invoices, weight and size of bales, and other indications which it was thought would prove safeguards, Customs officials knew well that only a limited reliance could be placed upon them. The difficulty of drawing a line could hardly be better illustrated than by the fact that in January last the Bombay Chamber of Commerce addressed the Tariff

Committee advocating the principle of value, but that now the Secretary of the Chamber informed him (MR. HOPE) that on reconsideration leading members were in favour of the principle of description. On the whole, therefore, there appeared to be no doubt of the soundness of the verdict, understood to emanate from some leading members of the Manchester Chamber of Commerce, and announced by the Chairman of the Bombay Chamber in his speech of the 5th January last, that this alternative scheme was unworkable.

It might be said that this decision against either total or partial repeal showed a total indifference to the interests of Manchester. It was, no doubt, the fashion in some quarters to represent the interests of the Government of India and Manchester as antagonistic. But in point of fact the reverse was the truth. Both were in the same boat, for if Manchester lost her trade, the Government would lose its revenue, and would be obliged to resort to some other form of taxation which, considering the suitability and extensive incidence of a tax on clothing and the ease with which a customs duty was collected, would be far more objectionable than the duties now complained of. The wisest policy in the interests of both seemed to be to leave matters to take their natural course, instead of aggravating by interference any evil, such as it was, which might exist. The Council had already heard how small a proportion of the cotton trade was really affected. There was scarcely a trade furnishing imports to India which had not to suffer to some extent from local manufacture. We had only to look around at some of the ordinary articles we consumed to see that they were produced in India as well as in England. The competition of which Manchester complained was now but little more than had always been encountered from the hand-looms of India. And moreover what did the duty amount to?—5 per cent.! Mr. Massey had remarked with truth that the Indian import duties were "the lightest in the world." Until two or three years ago the English import tariff itself comprised a duty on wheat called, like the Indian counterpart, a revenue duty, and yet no one thought of accusing England of being a protective instead of a free-trade country.

In accordance with the above view it was the desire of the Government, with the concurrence of the Council, to do whatever seemed to be in accordance with sound policy to prevent what little evil might be thought to exist from assuming through their neglect undue proportions. The only measure at

present required appeared to be the imposition of a duty upon raw cotton not the produce of continental Asia or Ceylon, which had therefore been provided for in the Bill. The reservation was intended to save Persian and similar cotton which was analogous to Indian and useless for the finer fabrics. The duty would, therefore, fall on American and Egyptian cotton, which the Bombay mills might be tempted to import. Another point was worthy of note, that the fact of the duty on imported twist being 1½ per cent. lower than that on cloth gave an encouragement to Indian mills to make the finer cloths from such twist. If it were thought by the English manufacturers that this modicum of protection was injurious, no doubt the Government would be ready to consider any representation they might make on the subject, and might abandon the policy of Mr. Laing, who reduced the duty on twist, and revert to that of Mr. Wilson, who declared in his financial statement of 1860 that he could "discover no good reason why cotton yarn and twist should be imported at a lower rate of duty than cotton piece-goods." If in spite of such precautions the Indian mill manufactures should assume more important dimensions than at present, then there appeared no doubt that the proper course would be, not a repeal of the import duty with its concomitant resort to more objectionable taxation, but the imposition of an excise duty. Home and imported goods would thus be put on an absolute equality, and the revenue unobjectionably derived from clothing would be preserved. At present there appeared to be little more need for such a measure than when in 1861-62 Mr. Laing decided against it. But it would be well if investors in Indian mills would bear this hint in mind and, thus forewarned, be precluded from charging the Government with breach of faith to them in the event of the imposition of an excise duty at any future date.

Having thus noticed the question of cotton goods, he would now take up that of raw metals. The Tariff Committee found that there had been a heavy fall in all of these, and especially in copper, lead, spelter and quicksilver. They accordingly recommended a reduction of the duty on these from 7½ to 5 per cent. But for the recovery which had been found since the date of their report to have taken place in 1874-75, it was probable that even a larger reduction than they advised would have been thought desirable. As it was, the present Bill adopted their recommendation, but extended it to all the metals paying 7½ per cent.

This reduction introduced the broader question of a reduction to 5 per cent. of all the articles in the tariff now paying 7½ per cent. Previous to the

Mutiny the normal rate of the tariff had been 5 per cent. except on a few special articles; but that event necessitated heavy increases, and it was not till 1864 that a return even to 7½ per cent. was attained. Ever since then there had been an implied understanding that the 5 per cent. rate would be reverted to whenever the state of the finances would permit.

The items paying 7½ per cent. were some fifty in number, and comprised several which could ill-afford the additional impost. In the case of raw silk, on which the additional rate produced nearly two lákhs of rupees, there was the anomaly that the home spinners of Gujrát and other Provinces had to contend at this disadvantage with imported silk goods paying only 5 per cent. duty. Another important point was, that all the 7½ per cent. articles were falling off. The average of the last four years was below that of the preceding four by no less than nine lákhs of rupees of duty, from which, at 7½ per cent., the falling off in the value of the imports themselves could readily be calculated.

The amount involved in a reduction of these articles to 5 per cent. was very large—no less than seventeen lákhs of rupees! The reduction from 10 per cent. to 7½ per cent. in 1864 had been recouped to the revenue in three years. But as in the present case the reduction would be of one-third instead of one-fourth, a longer period would perhaps be required. On the other hand the railway system had since then been greatly developed, and a greater proportionate recoupment might also be expected from every fresh reduction of duty.

Considering this prospect, and also that the relief would reach very numerous branches of trade, that it would in some cases be a set-off against unavoidably increased tariff valuations, as also that trade was believed to be generally depressed and the value of silver was low, he was glad to say that the Government were prepared, with the approval of the Council, to take a bold course, and reduce to 5 per cent. all items except arms, ammunition and military stores, which would be noticed presently.

The Tariff Committee were instructed, amongst other matters, to consider whether there were in the tariff any articles so unimportant that they might be exempted altogether from duty. The Committee found under this category only fishmaws, sozille and singally fish, and shark-fins, the whole duty on which was refunded on exportation. To this the present Bill proposed to add coffee, because two-thirds of the duty was refunded, and the net sum received was under £500 a year. Quinine, it was also thought, might be exempted, both on

hygienic grounds and in the hope of encouraging the importation of a purer article than that which was now received.

All changes in import duties thought to be prejudicial having been explained, he would proceed to exports. The first item was cotton goods. This duty was subject to the general objection that it was laid upon a local manufacture subject to severe foreign competition, and was thus a burden of 3 per cent. on Indian manufactures in foreign markets. Where, as happened to some extent, the goods were made of imported twist, which had of course paid the 3½ per cent. import duty, the burden was 6½ per cent. instead of 3. The returns showed a falling off in the trade of late. As coal and iron were relieved in 1862 on similar grounds, and the three Indian Chambers of Commerce, together with the Committee, recommended the measure, the abolition of this duty was provided for in the Bill.

Hides and skins, the Committee thought, might remain dutiable, as the trade was undoubtedly thriving. But considering that raw hides had been exempted some years ago, and it was an anomaly to tax the industry alone, especially in the face of competition, abolition was recommended in this instance also.

Seeds, grain (other than rice and wheat—the former to be noticed presently and the latter already free), oils, and spices were recommended for relief from duty by only a majority of the Committee, who held that although individual oils and seeds might be doing well, the trade as a whole had been nearly stationary for some years, and had to encounter severe competition from America and Russia—countries holding a great advantage as to freight and time of reimbursement of investments. These grounds were considered to warrant abolition.

With regard to exports generally, due weight ought to be given to the importance of relieving the producer, and the indirect returns in land-revenue, indirect taxation, railway receipts, and especially exchange, which would follow that policy. By the measure proposed the Indian export tariff would be reduced to three articles, all taxable, for the present at least, on special grounds. Indigo and lac were still in the main monopolies in the hands of India, and where, as might sometimes happen, the duty on rice fell on the producer, an exceptionally light land tax rendered him able to bear it, and justly liable to do so.

It was not possible, MR. HOPE proceeded to state, that relief from duty of the extensive nature now proposed, and amounting to perhaps thirty-four lákhs of rupees, could be given without increase of other duties where such a course was reasonable. Spirit was an article which had long been known as capable of bearing a higher duty. Two years ago the Bengal Board of Revenue had recommended that the duty of Rs. 3 per gallon should be raised to Rs. 4, in order to preserve a proper relation with the excise on country-made spirit. The Madras Collector of Customs on similar grounds recommended as much as Rs. 5 per gallon. As the existing duty was not light and every rupee per gallon was equal to six lákhs of rupees of duty, an increase to Rs. 4, which the Committee advocated, was thought sufficient for the present Bill. No doubt there was a possibility that this increase might check consumption, but not a probability, and if a decrease did occur it was likely to be met by a corresponding increase in the excise on country spirits.

Liqueurs were at present classed with champagne, and paid Re. 1-8 per gallon. The Committee recommended their being raised to Rs. 3; but considering that they were a pure luxury, there appeared no reason why they should not pay Rs. 4, as spirit did.

Wines were at present placed in two classes, champagne and other sparkling wines, paying Re. 1-8 per gallon, and all other wines paying Re. 1. On examining into the incidence of this rate the Committee found that claret and Burgundy were at this rate paying on an average 20 per cent. *ad valorem*, and held this rate to be sufficient, especially in view of the desirability of encouraging the use of such innocuous beverages by Europeans, in preference to spirits. Champagne and the like were found to pay only from 10 to 15 per cent *ad valorem*, and the remaining wines 11 per cent. on an average; so the Committee recommended that the one should be raised to Rs. 2-8 and the other to Re. 1-8 per gallon. In both cases the increase left the duty a little under 20 per cent., which could not be deemed excessive, since the duty on wines in England was believed to be about 23 per cent. The Committee's recommendations were adopted in the Bill.

It might of course be said that these increases on both spirit and wines were an addition to class-legislation at the expense of Europeans. There were, no doubt, certain well known objections to class-legislation which, however, need not be gone into on the present occasion, as in this case nothing more was effected than a readjustment of class duties, and a very desirable

one. The long list of articles the duty on which was reduced from 7½ to 5 per cent. embraced very many which were much consumed by Europeans. Apparel, for instance, got relief to the extent of a lákh and a half; glass-ware, Rs. 80,000; provisions and oilman's stores, Rs. 80,000; carriages, watches, pianos, billiard-tables, saddlery, china, stationery, and other things too numerous to mention, came in for their share. Soap, for which Europeans were believed to have an especial predilection, got a bonus of Rs. 5,000; and even the lovers of pipes and cigars were not forgotten.

Arms, ammunition and military stores were the last item entered in the Bill for increase. The Government thought it desirable on political grounds to raise the duty on them from 7½ to 10 per cent.

Besides the increases of duty already referred to, there were a few minor articles on which new duties were proposed. The reasons for a duty on raw cotton had been already given. As to the rate of duty, it was clear that in order that a local manufacturer using imported raw material might have no advantage over the importer of a manufactured article who had to pay duty, a duty on the raw material was required at least equal in amount to that paid on such manufactured article. Theoretically, perhaps the duty on the former ought even to exceed somewhat that on the latter. But in the present case it was thought sufficient to make the two equal—that is, to impose 5 per cent.

A small duty on salted fish was found necessary in Bombay, in order to prevent Indian salters who had to use our excised salt being at a disadvantage compared with importers of foreign salted fish, which had no excise to pay. The rate had been made nearly equal to our excise duty on salt. Indigo-leaves also it was proposed to subject to a special duty, to prevent the loss to the revenue arising from the manufacture of indigo in Pondicherry from leaves exported from British India. Duties were likewise recommended by the Committee in their 19th paragraph on a variety of small articles, in order to fill up gaps and correct anomalies. Their suggestions were adopted in the Bill, except as regarded bricks, tiles, tallow, and grease.

It was a relief, MR. HOPE continued, to turn from duties which it seemed necessary to impose to the mention of others which, though formally recommended by the Committee, did not appear expedient. The Committee suggested that six items which they deemed luxuries might be raised

from 7½ to 10 per cent.—a measure which was fortunately not financially necessary, and lay open to various objections. It was only fair, however, to those members of the Committee who by their votes carried this recommendation, to state that they probably would not have made it but for the belief that some equivalent must be found for the duties they desired to remove. Silk they proposed to raise from 5 to 7½ per cent. but this placed silk higher than other piece-goods. They also advised the increase of the duty on iron from one to two per cent., and the imposition of a 2½ per cent. duty on machinery, which was now free. The Government, however, were of opinion that it was as important to encourage manufacturing industry now as at the time when these articles received the favour they enjoy. The total estimated yield of duties thus suggested, but not included in the Bill, was Rs. 5,10,000.

Having thus explained the changes of all kinds in rates of duty which were comprised in the Bill, he would mention briefly tariff values. The valuations of the Committee involved a net loss of Rs. 2,60,000 on the basis of 1863-64, and they had been adopted in every instance except one. The Committee were equally divided as to the valuation of shirtings, which it was agreed among them should govern that of the classes above and below. Those members whom the casting vote of the President constituted the majority advocated a higher valuation, based on an average of the preceding thirteen months, the others a lower, in consideration of the present and future prospects of the trade. The difference between the two, though only amounting to six pies per pound, involved about Rs. 1,60,000 of duty. In view of actual quotations since the date of the report the adoption of the lower rate was now proposed. According to the estimates now prepared on the basis of 1874-75, and with allowance for all the proposed changes of duty, the net loss by valuations would be Rs. 6,20,000. The actual relief to cotton goods alone was no less than Rs. 8,80,000, or nearly 11 per cent. of the whole duty paid.

In conclusion, he would trespass but a few moments longer on the patience of the Council, for the purpose of stating very briefly the financial result of the entire measure, leaving to the Hon'ble Member in charge of the Finances to to show how that result affected the Budget and was justifiable on general financial grounds. The loss by reduction of import duties would be £173,000 per annum, and that by remission of export duties an equal amount, or £346,000 in all. To this was to be added, as already stated, £62,000 for tariff

valuations, making a total of £408,000 per annum. Against this loss was to be placed a gain of £100,000 per annum, composed of £64,000 from spirit, £28,000 from wines, and £8,000 from minor articles. The net loss was therefore £308,000 per annum. It would be perceived that the consumer would get a net relief of £161,000 and the producer of £173,000. As regarded the current financial year of course only two-thirds of these figures were to be taken, as four months of the year had expired. He had every confidence that the Council, in view of these figures and the explanations which had been offered, would approve of the measure he had had the honour of laying before them, as being sound and opportune.

The Hon'ble SIR WILLIAM MUIR said: MY LORD,—"The Council will probably expect from me some explanation of the bearing which the measures now proposed for their consideration will have upon the finances of the empire.

"Hitherto no extensive revision of the tariff has been made but at the beginning of the financial year and in connection with the budget. Measures of the kind taking effect during the currency of the year are inconvenient because of their disturbing influence on the estimates; and the present is no exception to the rule. But it was found impossible to mature the details connected with this revision at an earlier period; and my hon'ble friend has explained the evils that would have resulted from further delay. It is true that Government was in possession of the Tariff Committee's report before the budget was closed; but so many weighty questions required careful deliberation, that anything like immediate or precipitate action would have been most inexpedient; and in view of the broad and liberal treatment the subject has received on both sides of the tariff, the delay will not, I trust, be regretted by the mercantile community.

"Formerly all questions connected with Customs were dealt with in the Financial Department alone; but since the establishment of the Department of Agriculture and Commerce, the responsibility has naturally been shared with it. The proposals now before the Council, framed under the personal guidance of Your Excellency, have been carefully elaborated in both Departments and, I may add, have the cordial concurrence of both.

"As regards the charge of the Bill, it was felt that no one was more competent to the duty than my hon'ble friend who has introduced the measure, both from his intimate acquaintance with the subject and also because, having been himself

a member of the Tariff Committee, he was thoroughly cognizant of their proceedings and the reasons which dictated their proposals. And I am sure that the Council will feel that the manner in which he has discharged the trust has fully justified the confidence reposed in him. I think that the thanks of the Government are in an especial manner due to Mr. Hope both for his labours in elaborating all the details involved in this important measure and also for the exhaustive and able speech in which he has placed them before the Council; and the thanks of Government are similarly due to the Committee for the thorough and earnest manner in which they conducted their investigations, and for their complete and most satisfactory report of the results of their deliberations.

"The duty now devolves upon me of showing in what way the changes proposed will affect the estimates of the year, and how our future finances will bear the strain of the loss arising therefrom.

"And first as to the re-adjustment of VALUATIONS. The Committee estimated the loss of duty by reduction of values at £76,700 and the gain by increased values at £50,700, leaving a net loss of £26,000. But there was a difference of opinion as to the price of cotton goods; and the Government, giving the doubt in favour of the trade, adopted the lower valuation of the Minority, thus increasing the net loss to £42,000. A provision to this amount was accordingly made in the estimates for the year.

"But the loss has been increased by further alterations in the tariff. Making the calculation on the receipts of 1874-75, the reduction on cotton goods alone amounts to £88,000; whilst against this we have a gain by increased values of only £26,000, leaving a net loss of £62,000. Of this only two-thirds, or £41,333, will be incurred during the remaining eight months of the year: and this is covered by the provision in the budget of £42,000. In calculating the loss in future years, as compared with the estimates of the present year, a deduction to the extent of this provision should be allowed, which will leave a sum of £20,000 to be debited hereafter as the annual loss for decreased valuation.

"I proceed to notice the loss on IMPORT duties. In their treatment of the import tariff, the Committee confined their proposals to a reduction in the duty on metals, estimated at £17,000. They no doubt refrained from recommending any larger measures, not considering themselves at liberty to do so. But Your Excellency has happily determined on the broader and bolder course of cutting down the duty all round from its present rate of 7½ to 5 per cent.

"My hon'ble friend was himself in favour of this reduction, though he did not venture to look for it till some future occasion; in his separate paper he writes :—

"'There is no reason why cotton goods generally should pay a lower rate than other articles. I hope that the next general change will be a reduction of the 7½ rate to 5 per cent.; and I believe that fiscally the result would be very satisfactory.'

"The Tariff Committee of 1869 also advocated the same measure.

"If the finances of the country," they said, 'could bear the reduction at the 7½ per cent. duty to 5 per cent., we would urge the expediency of the change by which a considerable measure of relief would be afforded to the commerce of the country.'

"Looking back to the various changes which have taken place in the import tariff, I find that prior to the mutiny, the general rate on British goods was 3½ per cent. on raw products, and 5 per cent. on manufactured or prepared articles; with special rates at 7 and 10 per cent. on certain classes of goods. In 1859, owing to the deficit caused by the mutiny, the general rate was raised to 10 per cent, and on a variety of luxuries (as tea, coffee, millinery, grocery, &c.) as high as 20 per cent.; but this latter rate so crippled the trade that in the following year it was reduced by Mr. Wilson to 10 per cent.; and this continued to be the ruling duty for the next five years. Meanwhile in 1861 cotton yarn was lowered by Mr. Laing to 5 per cent., and in the following year still further to 3½ per cent., and piece-goods from 10 to 5. In 1863 iron was brought down from 10 to 1 per cent. The next large measure was in 1864, when the general rate was lowered from 10 to 7½ per cent.

"The measure then which Your Excellency has now resolved on, namely, a reduction of the general rate of import duty from 7½ to 5 per cent., brings us back to the normal import duty that prevailed before the finances were disorganized by the events of 1857-58, but without the special rates. From this large measure of relief we may anticipate the happiest effects, in the encouragement of commerce, and in causing a material accession to the import trade. The expectation is based on experience; for the rebound, when the duty was similarly lowered in 1864, is truly surprising. The average customs revenue from the articles affected for the three years preceding that reduction was £400,000; in the three years following, it fell to £333,000; but in the second triennial period (1867 to 1869) it rose to £404,000, that is to say, the loss was more than recouped within three

or four years. There is a distinction, however, between the former and the present measure; that was a reduction from 10 to 7½ per cent., or one-fourth; this, from 7½ to 5, or one-third; £400,000 duty at 10 per cent. represents a trade of four millions; at 7½ per cent. of five and one-third millions. Thus the former reduction was covered by an increase in trade of £1,400,000 in three years; or at the rate of above £450,000 a year. To recoup the loss in the present case, the addition to trade must be £3,440,000, which, at the former rate, would take at the least seven years. But then the present reduction is larger in the proportion of 4 to 3; and we may naturally expect that the stimulus to trade will be proportionately stronger, and more rapid in its action. Add to this that the railway system has since been greatly extended and the facilities for the distribution of merchandise multiplied. The import trade will also receive a reflex impetus from the relief proposed for the export trade.

"It is true that other causes may also have been at work to create the rapid development of trade from 1864 to 1867; but credit may justly be taken for the reduction as the chief agent; and the precedent strengthens the position of Government in its present resolution.

"Hardly any articles have been removed from the Import Schedule, excepting coffee which is a home product, and quinine, which was recommended by the Committee in 1869, and the cheap and plentiful supply of which cannot but be regarded as a blessing to the country at large. On the other hand, some minor articles, before accidentally omitted, have been added; for, constituted as the Indian import tariff is with a general reach and incidence, exemption can only be justified on special grounds, as e. g., with machinery, the attraction of which is of the highest consequence to develope the resources of the country, or where the duty is so small that its collection is not worth the expense and trouble. For any other cause, exemption would, under the present conditions of the tariff, be tantamount to a class-privilege.

"Bating the set-off from these additions, the loss to our Customs revenue by the reduction of import duty from 7½ to 5 per cent., as estimated on the receipts of 1874-75, will amount to £173,000.

"I now come to the EXPORTS: and here the recommendations of the Committee have (with one exception) been adopted whole and entire. Every staple has been swept away from the list of dutiable exports, but three. The reform

now achieved has long been demanded. For 30 or 40 years, it has been admitted on all hands that to levy a duty on the export of our own productions is the most vicious form of taxation, excepting only where we have either a monopoly of the staple, or such special advantages of soil and climate in its production as will enable us to command the market, and so to throw the increase of price upon the foreign consumer. As long ago as 1846, the Hon'ble Court of Directors stigmatized the levy of duties on the export of our staples, because 'they could not fail to restrict the demand for these articles, and to render them less able to compete with the similar products of other countries,' and concluded that 'all these duties were objectionable in principle and ought to be abolished with the single exception of indigo.'

"Sir W. Muir then quoted a number of distinguished authorities, from that time to the present, including Sir H. Maddock, the Calcutta Chamber of Commerce, Mr. Bullen, Mr. Crawford, Mr. Bullen Smith and Colonel R. Strachey, who had in the strongest terms denounced export duties, and urged their abolition. In 1860, the Right Hon'ble Mr. Wilson, thus addressed the Council :—

"'As a general rule, when the products of our soil have to find a foreign market, and in cases in which they enter into competition with those of other countries, the direct effect of export duties must be to place our products in those countries at a disadvantage with their foreign competitors. ... With regard to export duties on articles which have to compete with the products of similar articles from other countries in neutral markets, the first effect no doubt is that the export duty acts to that extent as a reduction of the price paid to the producer, and is a special tax and discouragement to him as a producer; but a further and serious danger is that your duty may exclude the articles from the foreign market altogether, act as a prohibition, and thus put an end to, or greatly limit, the production and the demand for labour. It is this obvious distinction that has made us so desirous to relieve our exports as the best means of improving our internal resources.'

"Notwithstanding these vigorous and unassailable protests extending over the last thirty years, the tariff has till very recently been clogged with a vast number of export duties. Slowly, and one by one, they have gone. In 1860, tea, coffee, wool, flax, jute, and raw hides, were freed; in 1865, silk, saltpetre, borax, wax and shawls; in 1873 wheat, and in 1874 lac-dye. But up to 1867, no less than 97 articles were subject to export dues, besides every article not enumerated in the tariff. A great reform was made, at the recommendation of the Committee in 1867, when only 9 articles were retained. And so the tariff has remained to the present time, when it is now left for Your Excellency to give the *coup de grâce*, or nearly so, to this bad system.

"Six staples of the country,* all labouring under the disadvantage of foreign competition, it is now proposed to free. The remission has been recommended in every case by the Committee excepting that of hides. But raw hides having been exempted in 1860, the maintenance of the duty would evidently have been a burden on the export of tanned and prepared skins, and thus a check upon a profitable industry. Indeed one chief merit of the present measures is that unfettered export will promote domestic manufacture not only in this case but in that of Cotton goods, Oils, and other commodities, (as has already been done with Jute), and so encourage the shipment of our staples in a more valuable shape, and one that will ensure a higher return. And we may assuredly hope that India has now a new rôle before her by the growth of a flourishing export trade in her own manufactures.

		Duty.
* Cotton goods	...	£ 16,383
Grain	...	„ 27,345
Hides (prepared)	...	„ 15,110
Oils	...	„ 9,496
Seeds	...	„ 98,473
Spices	...	„ 5,950
Miscellaneous	...	„ 53
TOTAL	...	„ 172,810

"In comparing with by-gone tariffs the Schedule now submitted to the Council with its three remaining articles, it is hardly possible to believe that but eight years ago, the export tariff contained close upon one hundred articles, besides every other commodity that was not therein expressly freed by name.

"From this measure, we may surely anticipate that a great impetus will be given to production throughout the country and to the export trade. The saying of the Wise man is true in this aspect as in so many others; 'there is that scattereth and yet increaseth, and there is that withholdeth more than is meet and it tendeth to poverty.' Instances are not wanting of the export of a staple having been checked with the view of retaining it in the country; and the result has been the drying up of its production; scarcity and dearness, and the eventual impoverishment of that country. On the contrary, the increased demand caused by free export, will, we confidently trust, stimulate production everywhere, cause fresh capital to be invested, and new labour applied; and thus, like fresh springs each one contributing its portion to the flood, the quickened manufactures and production will from every quarter help to swell the great stream of merchandise.

"This is not to be set down as mere theory or fond expectation. It can be illustrated from many undoubted examples of the marvellous growth of trade when freed from the burdens of the custom-house. I will adduce a few instances by way of illustration.

"JUTE (raw) was made free in 1860. In the five years preceding, the quantity exported averaged 684,800 cwts, value £344,500. In the five years ending 1874-75, the trade had increased to an average 5,790,000 cwts., value £3,504,000.*

	Cwt.	£
*Five years' average 1855-59 ...	684,800	344,500
" " " 1860-64 ...	1,641,259	902,463
" " " 1865-69 ...	2,580,000	1,326,000
" " " 1870-74 ...	5,790,000	3,504,000

"HIDES (raw) were exempted in 1860. In the five years from 1863-68, the value of raw hides exported averaged £894,758: in the next five years £2,355,677: and in 1874-5 £2,677,767.

"The statistics of TEA have a special significance for the confidence they afford of the steady growth and bright future of this important staple. It was made free in 1860; in the five years from 1863 to 1868, the average annual value of export was £519,164. In 1874 it had reached £1,937,429.†

†Five Years.	Averaage.	
	lbs.	£
1863-68	6,340,418	519,164
1869-73	16,285,653	1,409,589
1874-75	21,137,087	1,937,429

"The growth of the WHEAT trade (freed in 1873) is remarkable. From 1862 to 1865 the annual export was only 63,557 cwts.: during the last two years it has averaged 1,412,500 cwts.‡

	Average.	
	Cwt.	£
‡1862-65	63,557	...
1867-69	217,700	77,664
1870-72	426,540	188,313
1873-74 ... ... }	1,412,500	659,000
1874-75 ... ... }		

"The rapidly improving aspect of our general Export trade will be clearly learned from the following particulars, in which quaternial periods are compared for the last twenty years. The figures are exclusive of the value of raw cotton, the greatly enhanced price of which from 1862 to 1865, consequent on the American war, would have vitiated the comparison.

	£
Average for 4 years 1859 to 1862	25,800,000
" " 1863 " 1866	28,880,000
" " 1867 " 1870	33,239,247
" " 1871 " 1874	41,480,543

In 1834-35 the total of our exports to all parts, as Mr. Wilson shows in his

speech of 1860, was under Eight millions. It is now more than five times that amount. Mr. Wilson goes on to say :—

"'Again, Sir, in 1834-35, the value of our imports into India was only £4,261,106: in 1858-59 it was no less than £21,366,447; and in the present year will exceed £24,000,000" [*in* 1874-75 *it was close on* 36 *millions*]. "And this is independent of treasure, to the average amount of no less than £11,223,107 yearly ... ... Taking the exports and imports of merchandise and treasure, and there is really no distinction between the two, we find that the trade of India has grown up from a total sum of £13,847,289 in 1833-34 to one of £60,219,660 in 1858-59. Can we desire a stronger proof of the steady prosperity of the country?'

"A bright and promising view; but no one can accuse it of having been over-sanguine, when we find the average of the total trade for the five years ending 1873-74 was nearly Ninety-five millions, and that in 1874-75 it exceeded One hundred and one millions. With these facts before us, we may not doubt the marvellous buoyancy of Indian merchandise, nor question the capacity of the trade for future expansion in the same ratio;—or rather, having regard to the concessions now proposed, and the increasing facilities created by the railway, in a ratio still more rapid and surprising.

"The loss from the remission of export duty is close upon £173,000, which (by happy coincidence) is the exact relief given also to the import dues. The loss by exchange is a loss to importers, but it is a gain to exporters. The importers, therefore, may say that they were in need of greater relief. This is of course not stated as an objection, but simply as a suggestion, in case it might seem to render expedient a modification of the expression 'just.' But this must not be regarded as altogether a dead loss. For *first*, the remission of duty will stimulate the export trade; and that again, by swelling the amount required in repayment, will re-act upon our imports, and increase our customs revenue. *Second*, an increase of exports (until, at any rate, they shall have been balanced by an equal increase of imports) will improve the exchange by creating a greater demand at home for the means of remittance to India; and any improvement in exchange will lighten our burden on account of the heavy payments made in England. *Third*, the expanded trade will add to the railway traffic, and so to its receipts in which Government is directly interested. And *fourth*, whatever increases the demand for the products of the soil or enhances their value, must add to the wealth of the people; and moreover the Land-revenue is benefited not only by greater ease and regularity of realisation, but also (where the settlements are temporary) by an eventually

higher assessment. These are all clear advantages to our finance, which, though indirect, are not to be the less thought of on that account.

"Three articles are still retained on the export schedule. Of lac and indigo* we have practically almost a monopoly, and so the duty, serving to raise the price, falls on the foreign consumer. It is true that indigo is exposed to some inconsiderable competition from America and also to danger from mineral dyes; and Mr. Wilson seemed to contemplate its eventual remission. But the Committee say that the duty (not more than one per cent. *ad valorem*) is not felt, and they do not recommend its removal. It is a trade, however, which engages much capital and employs much labour, and is deserving of every encouragement: and I trust that it may be possible at some future time favourably to consider its claim to be free. The third staple is rice. The propriety of retaining the export duty on it was much discussed some time ago. It was then doubtful whether the duty had not a prejudicial effect upon the trade. But of recent years there seems ample evidence that neither production nor export is checked by it; on the contrary, both expand and flourish in a manner quite astonishing. The greater part of the export is from Burma, and the position of Burma is peculiar: the land assessments are extremely low; and this duty, which is a moderate tax on the profits of the peasant proprietors, is the most easy and convenient form of supplementing the land-revenue. It is clear that, for the present at any rate, it does not press; and such being the case, we could not afford to give up the large customs revenue of £600,000 derived from it for any mere theoretical objection. We are fortunate in having here present, in my hon'ble friend Mr. Eden, the highest authority on the subject; and I hope that he will give us the benefit of his views upon it.

	Duty.
Lac	£ 24,300
Indigo	„ 47,300

"I should have said that there was a fourth commodity subject to the trammels of the custom-house, and that is opium; for the income derived from it, under whatever form taken, is in reality an export duty. But it falls on the foreign consumer; and I think there are few, at the present day, who would wish to see the duty on it lowered or the traffic stimulated. Rather should it be our object, if possible, even to enhance the duty.

"We come now to consider the total loss for which we must be prepared. Upon imports and exports, there will be a loss on each of £173,000, for duties

reduced; and (as will be remembered) there is on account of lowered valuations a balance to be debited against future estimates of £20,000, making in all a total of £366,000. Against this must be put the gain expected from increased duty on spirits and wines, and the additional articles taxed, amounting (as Mr. Hope has shown) to £100,000; so that the net loss will be £266,000. The calculation is made on the returns of 1874-75, a favourable year. On the average of the three preceding years, it would be some £25,000 less.

"Such, then, is the loss for which we must be prepared. This is without taking account of any recoupment, direct or indirect, from increased trade. It is also irrespective of enlarged receipts from spirit manufactured in the country, the excise on which will be raised, as far as possible, to the enhanced standard of the new import duty; but against this there may possibly be some diminution of consumption. All such sources of increase are, however, contingent on the future; and to be absolutely safe (so far as safety is possible in finance) we must look how our ways and means will stand without them.

"In the current year, then, there will be no difficulty. Four months of the year have already passed; for the remaining eight the loss will be £177,334. The surplus provided in the estimates is £506,000; so that the margin is ample. And we have every reason to expect that the out-turn of the year will be materially better than the estimates. One heavy loss, indeed, there will be—for exchange; but however high we may take this, it will be far more than covered by the rising receipts in other branches. It is early, and perhaps imprudent, to calculate as yet the issue of the year. But there are certain branches in which we shall almost certainly be above our estimate. Opium is already £167,000 in excess, and by the close of the year may probably be £300,000 to 400,000. In customs we are even now £113,000 above estimate, and an equal sum in salt.

"So far as can be foreseen, no extraordinary charges are likely to devolve upon us. The only item of the kind is the grant of £30,000 for the visit of His Royal Highness the PRINCE OF WALES. And should the expenditure exceed that sum, assuredly we shall not grudge it on the auspicious occasion that augurs so well for the future of India, and promises to deepen the personal interest of the Throne, and one might add of the whole Realm, in the prosperity of this great dependency.

"Everything, indeed, looks prosperous at the present moment: and although it would be rash to calculate on the continuance of equal fortune to the close of the year, yet we may with some confidence assume that, even with the drain of the present measures upon it, the surplus of the year will prove to be considerably larger than what was estimated in the Budget.

"And now as regards future years, the same considerations may induce a feeling of security that the loss, even if in no degree recouped, would not endanger the equilibrium of our finances. True, if anticipated, that loss would have reduced the estimated surplus of the year to £240,000. But, then, we must bear in mind that the estimate for Opium, though taken at a higher figure than before, was still avowedly low. It was, in fact, £380,000 below the lowest income of the last seven years, and £800,000 below the average of that period. It is not unreasonable then to expect that we shall, on the average, have in the future at least £400,000, or half a million, above the estimate of 1874-75. Then the other main sources of revenue,—Land, Excise, Salt, Customs,—are all in a sound state, and show a tendency to rise, and that in a far more marked and rapid way than any increase in the charges of administration. It is true that the prospects from exchange and the depressed value of silver are not encouraging; but any loss on that account must be small in comparison with the sources of enhancement. And over and above all these considerations, we have the good hope of an eventual full recoupment of our loss by the steady growth of trade, increased Railway receipts, and other benefits to be looked for from the present measure.

"In forming any forecast of our position, it would be wrong not to take into account the contingencies of the future in reference to three enemies of Finance,—*famine*, *flood* and *foe*. In so great an empire, we cannot but expect from time to time the visitation of drought and famine in some parts of the dominion. But the experience of the past is not discouraging. The special conditions of the recent famine in Bengal involved, from the inaccessibility of the tract, the necessity of an unusually large expenditure. And yet the cost, nearly Six millions, was (as shown in the financial statement for the year) nearly covered by the surplus of the preceding three years alone. And it should be remembered that this conclusion is not affected by the money we have been borrowing during that period. All this and more has been devoted to the construction of reproductive works which,

besides adding to the revenue and the prosperity of the country, will eventually repay the interest due upon them. The debt, therefore, will in reality prove no burden. The general revenues will not be one whit the worse on their account.

"As respects floods, we are no doubt frequently exposed to them; but I do not recollect any instance in which they have seriously affected our receipts. During the past year there were serious losses from this cause both in the Madras and Bombay Presidencies; but they hardly told perceptibly on the revenues of the year.

"As for war, it is of course entirely beyond the scope of any computation, and we can only trust that there may be 'peace in our time.' But bating this last contingency, we have, I believe, every ground of confidence that our receipts will continue to be in excess of our normal expenditure; and that even after the drain upon them caused by the proposed measures, we shall have a sufficient and an improving margin.

"There is one other conclusion to be drawn from this brief review of our finances. It will have been clear that, even if it had been on other grounds expedient, our position would not have admitted abandonment of the duty on cotton imports. The loss of £800,000 could not have been undergone unless we could have substituted for it some new source of taxation; that is to say, we should have to give up a productive source of income, the pressure of which, though of wide incidence, is not appreciably felt by the people, and in its stead impose some new measure that could not fail to harass and irritate the people. I hardly think that any one could seriously contemplate the alternative. Indeed the arguments of the Committee, as clearly enforced by my honourable friend, are conclusive against the necessity for any change. The competition from domestic manufacture affects at the most only Four out of Eighty lákhs of rupees of duty, that is only one-twentieth part of the trade. If the coarser commodity so affected could have been treated separately, it might have been exempted altogether; but, as Mr. Hope has shewn, there are insuperable difficulties in the way. No doubt, the argument is theoretically correct that where a commodity is produced at home, we should either free the import of that commodity, or excise its production to an extent equivalent to the import duty, or altogether prohibit its production. But if Hon'ble Members will cast

their eye down the import schedule, they will find hardly any article which, in consequence of the vast area and varying conditions of our soil and climate, cannot be more or less produced in some part of our dominions. The argument, however perfect in theory, would prove too much in practice; for I presume no one will contend that, in deference to mere theory, we should surrender our whole revenue on imports, of £1,700,000. And, in point of fact, the duty is so low that it cannot perceptibly affect the trade. This was evidently the opinion of Mr. Laing. In his financial statement of 1861, when vigorously denouncing all protective duties, and asserting that they 'certainly could not be maintained for a couple of years,' he at the same time admitted an exception where the import duty was 'so small that it would be palpably not worth while to establish a countervailing system of excise.' The duty on cotton piece-goods was then 10 per cent., and that on yarn (reduced by him to) 5 per cent.; it is now but 5 and $3\frac{1}{2}$ per cent., respectively. His views are still more explicitly stated in the following passages delivered on the same occasion:—

"'Free trade does not mean that there shall be no taxes; but that taxes shall be levied solely with the view to revenue, and not partly for revenue and partly for protection.

"'That every Customs duty on an imported article should have a corresponding excise duty on similar articles produced at home, has therefore become an axiom; and it admits of only one exception, where the amount of import duty is so moderate, that it does not seriously affect trade, while it makes it obviously inexpedient to establish an excise machinery for the sake of levying a trifling duty.

"'This is the case with regard to corn in England, where a duty of 1*s.* a quarter equal to 5 per cent. on the cheaper sorts of foreign grain is retained, and it is precisely our case with regard to piece-goods.

"'We cannot dispense with Customs duties on our imports generally; and while this is the case, no reasonable man can object toour retaining an old accustomed duty of 5 per cent. on manufactured goods.'

"The argument is sound, and on the present occasion most pertinent. The trade flourishes under the duty, and the imports indeed were higher last year than ever, even although burdened with an excessive valuation. The trade will now receive material relief in that respect to the extent of £88,000, or 11 per cent. of the entire duty hitherto paid, and it must not be forgotten that the Government has specially favoured this branch of merchandise

by adopting the lower valuation of the Minority of the Committee. Moreover in common with all other imports, the cotton trade must benefit in the increased demand, which we trust will follow the freeing of the export traffic, in repayment of growing shipments to Europe.

"I must apologize to the Council for having detained them so long; but the measure which I trust they will shortly pass into the law of the land, will, I am sure, form an important era in the history of the Indian tariff; and although the effect upon the finances is by no means serious, yet the interests involved are so weighty, that the subject demanded a review in all its bearings so far as it lay in my power to furnish it. And I trust Your Excellency will allow me to congratulate you on having carried this important reform so near to its conclusion; swept away the last financial trace of the mutiny; and placed the tariff for the first time on anything approaching to a sound and consistent basis. I hope that even within the period of your own Viceroyalty, Your Excellency will witness the success of this reform financially in the increase of trade, and still more, under the blessing of God, in developing the wealth and advancing the welfare and prosperity of India."

The Hon'ble MR. EDEN said:—"There can, I think, be no doubt as to the soundness of the policy by which the Government has been guided in making the alterations of customs duty just announced by the Hon'ble Mr. Hope. Coming at a time when trade generally is slack and depressed, they give relief to nearly every branch of trade, either by a direct reduction of duty from 7½ to 5 per cent., or by a modification of the fixed valuation on which duty is assessable, or, in the case of exports, by their removal to the free list. In making these changes, I think that Government has gone quite as far as it safely can go for the present. Possibly the Manchester trade may not be satisfied and may consider that sufficient concession has not been made to their representations regarding the injurious effect of the present duties on the cotton trade. But, as explained by the Hon'ble Mr. Hope and by the Tariff Committee, their expectations were not altogether reasonable and were not warranted by the actual condition of the trade. Still they have received very material aid by the reduction of the fixed valuation on cotton goods, which is equivalent to a surrender of £80,000 of the duties now levied on such goods, being 10 per cent. on the total collections on that head.

"It is not, however, necessary for me to follow the Hon'ble Mr. Hope and Sir W. Muir through the different changes which have been made; but with

reference to what has been said by Sir W. Muir regarding the maintenance of the export duty on rice, I wish to make a few observations, as it is a subject in which I am particularly interested, and regarding which I have had special means of observation. As Sir W. Muir has observed, this export duty on rice has for some years past been very strongly attacked by those who think that all export duties are unsound in principle and indefensible. Fully admitting the principle as a general one, I have always maintained that there are special circumstances under which export duties are perfectly justifiable and are an excellent form of taxation. This may be either where we have a complete monopoly of the trade in the article in foreign markets, or where, as in the case of the rice trade, there are special circumstances connected with its production which render the duty innocuous while it at the same time yields a very large revenue. The duty on rice comes under this last condition, and I think I shall be able to show by incontestable figures that the foreign rice trade is in a singularly prosperous condition, and that it is developing and progressing in a degree which is almost without precedent in any branch of the export trade.

"In taking figures, it will be best to confine my remarks to what are called the rice ports, that is to say, the ports of Burma, which have really almost a monopoly of the trade with Europe in the cheap and common kinds of rice. Bengal is affected by a number of considerations which do not affect the Burma trade, and exports a great deal of superior rice on which the duty falls very lightly. Not many years ago the advocates of the abolition of the export duty on rice brought great pressure to bear on Government, and by declaring that the Burma trade was declining in favour of the trade of Siam and Cochin China, very nearly succeeded in making Government sacrifice the important revenue which these duties afford. How far they were from being justified in their apprehensions will be apparent from the following figures. The duty on rice was raised in 1867; the amount exported in the two years before this rise of duty was—in 1865, 380,000 tons, in 1866, 340,000 tons. While in 1872 the export under the duty had risen to 660,000 tons, in 1874 it was 760,000 tons, up to the latter part of July of the current year it has reached 600,000, while there are between 200,000 and 300,000 tons remaining to be shipped. The total surplus crop for this year is not much less than 900,000 tons, or nearly treble the export which took place before the duty was raised, and if this is all shipped, as I believe the bulk of it will be to foreign ports, it represents a revenue of £450,000, or nearly half a million, and it is this that the Government of India is asked to surrender for the sake of supporting a theory.

"In 1872, the Government of India invited from the Local Governments an expression of opinion on this subject. In replying to this call, the Government of Madras, while objecting to the duty as a matter of principle, admitted that 'the general opinion seems to be that the duty exercises no appreciable influence on the trade,'—a view which is completely borne out by the return of rice exports from Madras. In the Lieutenant-Governor of Bengal's reply it was said that 'the export of rice keeps up pretty steadily, though it of course varies with the harvests and the price of grain in Bengal and Europe. The rice export flourishes and improves, notwithstanding the small duty it has to bear. Almost every one of the reporting officers says that no ryot, landholder, or dealer in the interior of the country, even knows of the existence of the duty. So far, then, as Bengal is concerned, the Lieutenant-Governor does not consider that the rice duty should be the first tax for reduction or abolition.' The Chief Commissioner of Burma strongly upheld the continuance of the duties on the ground of the enormous development of the trade and the peculiar circumstances of Burma. He said—

"'It is quite clear from this that the anticipations of those opposed to the imposition of these rice duties have in no way been fulfilled. It has been said that we could never compete, weighted as we are, with Saigon and Bangkok, the rice of which ports is subjected to no duties. The results, on the contrary, show that they are quite unable to compete with us, and that they have been beaten altogether out of the European markets. Indeed, the rice of those countries would never have entered the European market, had it not been that there was in 1868 a very large harvest in China, and the home supply of that country was such as to make the foreign rice a drug in the market. Under these circumstances, Saigon and Bangkok had no other course but to ship to Europe; this they did and were supposed to have become dangerous competitors, though, after all, the quantity they shipped to Europe was very insignificant, Bangkok sending in 1869, 53,000 tons, Saigon, 31,260 tons, a very small export compared with the 550,000 tons which Burma is sending this season. The experimental export from Saigon and Bangkok, however, was a failure; their rice did not suit the European market and fetched £1 to £2 per ton less than the Burma rice; and, as a natural consequence, as soon as the rice market in China resumed its normal condition, the exports from Saigon and Bangkok ceased, and the whole trade again fell into the hands of Burma It must be prominently kept in view that the natural ports of supply for China are Saigon and Bangkok, the natural ports of export to Europe are the Burma ports.. It may be taken as an undeniable fact that so long as the rice supply of Siam and Cochin China are not capable of meeting the wants of China, we shall be called upon to make good the deficiency; whenever they are capable of meeting this demand, no rice will go from this to the East. On the other hand, so long as those ports can obtain a market in the East, they will not endeavour to compete with Burma in the European market.'

"This view of the little danger to be apprehended from the competition of the Eastern ports with Burma, has been fully confirmed by the returns of

subsequent years. Even in 1874, when Burma was called upon to supply rice in large quantities to meet the Bengal famine and when prices were high, Saigon only sent to Europe 14,000 tons, while Bangkok sent 3,000 tons. During the first half of the current year, while Burma has exported 600,000 tons, Saigon has sent none to Europe, and Bangkok under 3,000 tons. In the same letter the Chief Commissioner showed that, owing to the keen competition in the rice trade the merchants gave to the producers the full amount which European quotations enabled them to give, and that if the duty was taken off, it would not in any way affect the price to the consumer, but would be added to the price given to the producer. Competition with foreign markets therefore was not affected by the duty, which fell wholly on the producer. The opinions of some of the leading rice merchants were quoted. One merchant said: 'At the present moment if the rice duty were remitted, I do not think it would affect the gross cost of rice intended for the European market.' Another said that the duty had not affected the trade: 'In fact, in spite of the heavy export duties the trade has steadily gone on developing and increasing, and the cultivation of paddy seems to be extremely profitable to the cultivators, who are yearly increasing their cultivation. The export duty falls exclusively on the cultivators.' A third merchant said that he believed that the duty falls entirely on the producer, in fact, the duty may be regarded as an indirect tax on the grower. And he goes on to say that 'were the duty repealed to-morrow, the price of paddy would immediately advance proportionately, thus benefiting the producer entirely and not even in the slightest the shipper.' Thus clearly those interested in the trade do not agree with those who maintain that because export duties are wrong as a general principle, therefore their continuance must strangle the trade.

"It has been shown that the duty falls on the producers, the real test as to whether this is mischievous is the extent to which it has hindered production. Now the amount of land under rice cultivation in British Burma in 1870-71 was 1,709,490 acres, while in 1873-74 it had run up to 2,061,568 acres, an extraordinary increase when we recollect that the agricultural population of the country is only 1¼ million, and that therefore under ordinary circumstances and with normal profits the cultivation of new land would be a matter of time. In the one year for which we have the latest returns, 1873-74, the increase of cultivation was 206,578 acres. In the face of these facts it is quite impossible to maintain that production has been impeded by the duty. The ground upon which the maintenance of the rice

duty has always been advocated by the authorities in Burma is, that it does fall exclusively on the producer, and that it is therefore an admirable way of supplementing the land-revenue. It is most important to keep the land-revenue as light as possible. Burma is peculiarly situated; it has a vast territory but a scanty population; it is however surrounded by Foreign States from which we desire to draw the surplus population, and we have hitherto been most successful, but this can only be done by placing on the land a very light assessment, and supplementing it by a rice duty which the people pay without knowing anything about it. To make our revenue system compare favourably with the system of taxation in the Native States from which we draw our immigrants, we must keep our taxation out of sight as much as possible.

"I trust that I have succeeded in showing that the rice duty has not injuriously affected the trade or the producer, that if it were surrendered it would inflict a serious injury on the revenues of the country with absolutely no corresponding advantage to compensate for the sacrifice, and that the result would be sooner or later that we should have to substitute some offensive and objectionable tax for one to which no one has raised the slightest practical objection and which is collected in the manner most in accordance with the feelings of the people."

His Excellency THE PRESIDENT said :—"Mr. Hope has so clearly put before us the reasons which induced the Government to appoint a Committee to revise the Indian Customs Tariff, the recommendations of the Committee, the extension that the Government has been able to give to those recommendations, and the financial effect of the Bill which he has introduced, that I have little more to say upon the Bill itself than to express my cordial concurrence in the thanks which Sir William Muir has tendered on the part of the Government to the Committee, and especially to Mr. Hope himself both for his services as a Member of the Committee, and for having accepted the task, which he has so ably performed to-day, of explaining the subject to the Council.

"Without dwelling upon details that have already been fully discussed, I desire to say a few words upon the general considerations which govern the Customs duties of India.

"The Government of India possesses the advantage of being closely associated with the Government of England—a Government which has taken the lead in adopting and developing the principles of free trade; and we must expect

to see our financial policy judged by a comparison with that of England—judged, that is to say, by the highest standard in the world.

"Indian statesmen have always acknowledged the principles of recent English financial legislation to be sound, although owing to differences between the two countries it has been impossible to carry them out as completely in India as in England. Indian statesmen have never regarded Customs duties as desirable for the purpose of protecting the products or manufactures of India. Mr. Wilson, Mr. Laing, Sir Charles Trevelyan, Mr. Massey, and Sir Richard Temple have all been thorough free traders. In India, equally as in England, protection has been regarded as an exploded doctrine, contrary to the general interests of the country which imposes protective duties. In India, equally as in England, the doctrine has long since been abandoned that the mother country should favour colonies or foreign possessions by Customs tariffs or navigation laws; as well as the corresponding doctrine that colonies and foreign possessions should adopt Customs tariffs or other financial measures which favour the mother country against the interests of the colony.

"At the time of the American War, Sir Charles Wood, who was then Secretary of State for India, was pressed to take certain measures for increasing the export of raw cotton from India to England. 'Whatever,' he said, 'is for the 'real interests of India, I will do, and do willingly, but no more.' His position was never challenged; and in all financial questions the true interest of the people of India is the only consideration which the Government of India has to regard.

"The general principles, then, which should guide us are agreed upon both here and at home; and, if we examine our Customs tariff by the light of those principles, we must frankly confess that there is much to amend.

"A considerable revenue has hitherto been raised by export duties upon articles of Indian produce which are subject to the competition of articles produced in other countries, and there exists also what I can only call the monstrosity of a duty upon the export of Indian cotton manufactures. Such duties are of course altogether inconsistent with free trade. Sir William Muir has told us that they have only been retained in consequence of the necessity of the case; that many have been abolished from time to time; and that an intention has frequently been expressed to abolish the remainder as soon as the condition of the finances would admit of it. The measure which I hope will to-day be

passed into law is a very substantial advance in this direction. Grain, seeds, oils, spices, hides, and cotton manufactures will be freed from export duty, and only three articles of export—rice, indigo, and shell-lac—will hereafter be taxable.

"Although our duties upon imports are not so open to objection as those upon exports, much still remains to be done before our import tariff can be regarded with satisfaction. If the English and the Indian tariffs are compared, it will be found that in England Customs duties are imposed on a few main articles of consumption—such as tea, coffee, sugar, and wine which cannot be produced in England,—tobacco whose production is prohibited—and spirits upon which an equivalent Excise duty is imposed. The reason why such simplicity has been found practicable in the English tariff is that the wealth of the country has sufficiently increased to admit of a large revenue being derived from a few articles; and, moreover, that some of the principal articles of consumption in England are the products of tropical countries, and cannot be produced in England.

"It is only, however, under the most favourable external circumstances, after the lapse of many years, and a great progress in education and wealth, that this result has been achieved in England: it has indeed been for the most part brought about within my own Parliamentary recollection. No other nation in the world has as yet been able to come up to the English standard, on account either of disadvantages of position or of the predominance of unsound doctrines of finance.

"In India we cannot hope as yet to arrive at so simple a tariff upon imports. The reason is that India is a far poorer country than England, and therefore we cannot obtain a large Customs revenue upon a few articles, and are obliged to draw a larger number within our net. Moreover, India is a country which possesses, either in existence or in embryo, the means of supplying all the necessaries, and many of the luxuries of life. Indeed, with the exception of wines and some classes of spirits, there is hardly any article imported from abroad which could not be produced in India; and, in order to obtain any substantial revenue from duties on imports, we are forced to tax articles which may be, and many of which actually are, produced in India; and so far our import duties, although low in amount and imposed for revenue purposes only, may have had some protective effect.

"The theoretical conclusion is obvious—that, in order to bring our tariff into absolute conformity with the latest development of English financial legis-

lation, all import duties, excepting those on the few articles which India cannot produce, or upon which an equivalent Excise duty can be put, should be abolished, and other means should be found of raising the revenue which would be sacrificed.

"But I agree with Sir William Muir that the practical conclusion is entirely the reverse. India is a country in which there is but little choice of new sources of taxation: it would be difficult to replace a large amount of revenue excepting by an Excise duty on tobacco or by some kind of direct taxation. I am satisfied that such a change would not be desirable even in a financial point of view. The army of tax-gatherers, on low pay, which would be let loose over the country to collect a new Excise, would probably involve a larger charge to the Government than the cost of collecting the Customs duties; and, what is of more importance, by the imposition of a new Excise duty or of direct taxation under the best arrangements that could be made to levy either, the people of India would, in my opinion, have to pay a larger sum than they would gain by the reduced cost of the articles which would be affected by the abolition of our Customs duties.

"But this is not all. I have no hesitation in asserting that the political evil of giving up our Customs duties, or a large part of them, and of imposing fresh taxes in their place, would be great. Whatever may be the objections to Customs duties, they possess the advantages of being collected easily and paid without pressure. These advantages are of peculiar importance in India, where new taxes are particularly liable to occasion popular discontent. To substitute direct taxes or new Excise duties for the Customs duties which are now imposed upon foreign goods, seems to me to be a policy which would be contrary to the interests of the people of India, and which no statesman with a knowledge of India and a sense of responsibility could be found to propose.

"Under these circumstances successive Governments have done all that was feasible. From time to time, as Sir William Muir has pointed out, articles of importance to the development of the resources of India—such as machinery and iron—have either been entirely relieved from duty, or the duty has been reduced to a very low amount. We propose now, leaving all exceptionally low duties as they stand, to reduce the present general rate of 7½ per cent. *ad valorem* upon imports to the old rate of 5 per cent.,—a rate imposed entirely for purposes of revenue, and which cannot be fairly described as protective.

"I need not detain the Council with many observations upon the effect of the import duty upon cotton goods after the exhaustive manner in which Mr. Hope has dealt with that subject. Indeed the general remarks I have already made upon our tariff are sufficient to show that we could not give up so large an item of revenue as the import duty on those goods, which brings us in more than £800,000 a year. It is to be observed that, while we are only now able to reduce our general rate of import duty from 7½ to 5 per cent., the latter rate has been adopted since the year 1862 for cotton goods, while cotton twist has been charged with a duty of only 3½ per cent. Mr. Hope has shown that the competition of the Indian manufactures is confined, owing to the inferior quality of the raw cotton produced in India, to the lower classes of goods which form but a small part of the whole trade.

"It is difficult to draw a perfectly accurate comparison between the imports of cotton goods over a series of years owing to alterations in the tariff valuations. The annual statement of Trade and Navigation furnishes the following figures:—

"In the three years from 1859-60 to 1861-62 the average annual value of the imports of cotton twist, yarn, and piece goods was in round numbers £11,000,000.

"In the four years from 1862-63 to 1865-66 the average annual value was £12,150,000.

"It will be remembered that the duty was reduced in 1862, and the tariff valuations were raised in 1864; but the high price of cotton goods which prevailed owing to the American War must have had a prejudicial effect upon imports.

"I omit the financial year 1866-67, as it only embraces 11 months.

"In the four years from 1867-68 to 1870-71 the average annual value was £17,966,000.

"In the four years from 1871-72 to 1874-75 the average annual value was about the same—that is to say, £17,970,000; but the tariff valuations were lowered in 1869 by about 15 per cent.; and, if allowance be made for this, there would be an increase of about a quarter of a million over the average for the preceding period.

"In the year 1874-75 the value was £19,387,270, which is the highest return for any year of the period which I have reviewed. I know it is stated that the trade of last year was not prosperous; but looking at these figures together, and making every necessary allowance, I can see nothing in them to lead us to suppose that the demand in India for English cotton manufactures has diminished or is likely to diminish.

"On the contrary, it is more probable that as the demand for English cotton manufactures has hitherto steadily progressed, notwithstanding the competition which has always existed in the lower classes of goods from Native hand-loom weavers, so it will continue to progress, although the lower classes of goods may in future be produced in the Indian manufactories cheaper and better than they have been by hand-looms.

"While, however, for the reasons given by Mr. Hope and Sir William Muir we see no reason for remitting the duty, we have gladly given substantial relief to the trade in cotton goods by a reduction of their tariff valuation. We have preferred the lower valuation recommended by the minority, and relief to the extent of no less than £88,000 per annum, as compared with the duty paid last year, will be given to the imports of cotton manufactures.

"The only increase of duties which we propose, putting aside some minor items, is to raise the import duty upon spirits and wine. We think that wine may fairly bear a moderate increase, and spirits are undoubtedly a legitimate subject for increased taxation. The Excise duty on spirits manufactured in India will as far as possible be raised in the same proportion as the Customs duty on imported spirits. The principle by which the Government is guided in the taxation of spirits is exactly the reverse of that which is followed in regard to other imports. The general principle is to impose low duties, and to rely upon increased consumption for an expansion of revenue. In dealing with spirits, the principle is to impose as high a duty, whether by way of Customs or Excise, as can be levied without being defeated by smuggling or illicit manufacture.

"Sir William Muir, who has especial charge of our finances, has shown that we need not apprehend any disturbance of the estimates of the current year from the alterations in the tariff which we propose to make. He has, moreover, given us good reasons to anticipate that the relief we are about to give to trade will involve no ultimate loss to the revenue. For my own part, taking into consideration the indirect, as well as the direct, advantages to the revenue which will be derived from the proposed measures, I believe

that they will prove financially successful. I have therefore no hesitation in recommending them to the approval of the Council.

"Shortly stated, they are as follows:—

Export duties will be abolished which last year produced a revenue of £173,000.

Import duties will be reduced which last year produced a revenue of £173,000.

Import duties will be imposed which are estimated to produce a revenue of £100,000.

The tariff valuations will be revised at a net loss to the revenue of £62,000.

The whole net relief calculated upon the Customs receipts of last year will be £308,000.

"Notwithstanding this, the Customs revenue for the financial year 1875-76 is not expected to fall short of the estimate by more than £70,000 for reasons which have been fully explained to us. The result in future years depends upon the correctness or otherwise of our anticipations that the loss will be speedily met by a substantial increase of other sources of revenue.

"I do not dare to borrow the proud metaphor with which Mr. Gladstone illustrated a policy similar in character, but on a far grander scale than that which we propose for the abolition and reduction of Customs duties. He likened it to the tree of golden leaves described by Virgil; from which his hero was ordered to pluck a branch, and on whose trunk the moment one branch had been plucked another took its place. In the language of the Poet—

"Primo avulso non deficit alter
Aureus; et simili frondescit virga metallo."

"We in India, pursuing the same course at a respectful distance, may be allowed to draw upon the great scholar of the Latin Poet for a less ambitious metaphor, and to use the language in which Dante describes a similar legend—

"Qual egli scelse
L'umile pianta, cotal si rinacque
Subitamente là onde la svelse."

"As he selected every humble plant,
Wherever one was pluck'd another there
Resembling, straightway in its place arose."

"We believe that the humble plant we are about to pluck will, if not at once, assuredly ere long, be replaced by a healthy and vigorous offspring.

"I am glad to embrace this opportunity of making some observations upon the general condition of the finances of India.

"During the last three years it has not been necessary for the Government to propose any fresh taxes; and, consequently, under the provisions of the Statute by which this Council is governed, there has been no opportunity for the Financial Member of Council to make the Budget statement which, in former years, under less fortunate circumstances, used to be looked for with so much anxiety. I do not regret that the necessity for annual budget discussions has ceased to exist. On the contrary, I look back with satisfaction to the fact that no fresh taxes have been imposed during the past three years; and I agree with the high authorities who hold that the annual discussions were open to the objection of raising apprehensions of additional taxation, or at least of leading the public to expect changes every year in the financial arrangements of the State. Such changes in England are well understood and regarded without apprehension, but in India they are liable to be exaggerated and to disturb the minds of the people. There are none of the constitutional reasons for annual discussions which exist in England, and the consideration of financial measures by this Council only when the necessity for them arises is, in my opinion, both more in accordance with our functions, and more calculated to maintain the stability of Indian finance than such annual discussions.

"While, however, there have been no annual budget statements in this Council for the last three years, there has been no concealment as to the state of our finances. The Government of India has always pursued the wise course of giving the fullest publicity to everything relating to the financial condition of the State, and we publish with the most ample explanations our annual estimates and accounts, together with every other information which bears upon trade and finance.

"In order to place before the Council, as clearly as I can, the present financial condition of India, I will take the statistics of the four last financial years, beginning with the year 1871-72, and ending with the year 1874-75. For the first three years we have the final accounts, and for the last we have what are called the 'Regular Estimates,' which usually approach very closely

to the actual results. I will first compare the ordinary revenue of each year with the ordinary expenditure, omitting the charge which we have had to defray on account of the Bengal famine, and omitting also the expenditure which has been incurred in the construction of rail-roads and irrigation works, which, in the accounts, are classed as 'Extraordinary.'

"The revenue exceeded the expenditure in the year 1871-72 by £3,124,177; in the year 1872-73 by £1,765,672; in the year 1873-74 by £2,071,937; and in 1874-75 it is estimated to exceed the expenditure by £1,889,000. In the four years, therefore, there appears upon the face of the account to have been a surplus of revenue over expenditure of no less than £8,850,786.

"These figures, however, present the account in rather too favourable a light. Certain deductions, with the reasons for which I need not trouble the Council, should be made from the revenue in order to show the correct balance between income and expenditure. I calculate these deductions to amount in the four years to £1,738,253, but, after making them, the surplus still amounts to the goodly sum of £7,112,533.

"The expenditure upon famine relief in 1873-74 was £3,864,673, and the estimated expenditure for 1874-75 is £2,442,000, giving a total of £6,306,673. After charging the whole of this expenditure against the ordinary revenue of the four years, there remains a surplus of £805,860. I am informed that the accounts for 1874-75 will probably show a larger increase than usual over the Regular Estimate, and we may confidently anticipate that, after defraying the famine charges, there will remain a surplus of revenue over expenditure in the four years of not less than a million sterling.

"In a Resolution of the Government of India last year we expressed our opinion that, 'besides a fair surplus of income over ordinary expenditure, such a margin should be provided as would constitute a reasonable provision for meeting occasional expenditure upon famines.' The financial history of the last four years shows that such a margin has been amply provided. We have met a very large expenditure for famine relief out of the ordinary revenue of four years, with a substantial balance besides. It may interest the Council to know that when a calamity of the same kind fell upon Great Britain, in consequence of the failure of the potato crop of Ireland, only two millions out of a total expenditure of about ten millions was defrayed from ordinary sources of

revenue, the remainder having been raised by loan and not appearing, according to the best information I can obtain, in the accounts of ordinary income and expenditure.

"In several despatches which successive Secretaries of State have addressed to the Government of India on the subject of finance, a desire has been expressed—more I think in the nature of a hope than of a confident expectation—that the Indian finances might show an annual surplus of more than £500,000. It will be seen that our surplus in four years has amounted to £7,000,000, or more than three times the sum which the Home Government has desired.

"This satisfactory result, moreover, has been accompanied by a considerable remission of taxation. In the year 1873, the Income tax, which during the preceding two years had produced a net sum of £1,362,570, was allowed to lapse. The Southern Customs Line, which drew its long and obstructive length of 800 miles across Central India, has been abolished at a considerable sacrifice of the salt revenue; and yet in each of the last two years we have realised a very substantial surplus.

"Our cash account for the four years we are examining is given in a statement which is in the hands of Members of Council.

"The cash balance in India and England stood on the 1st of April 1871 at £20,124,715, and it was estimated to stand on the 31st March 1875 at £18,386,198. We have spent in the four years on Public Works Extraordinary £11,401,351, the balances of the Guaranteed Railway Companies have been diminished by £1,212,466, a disbursement which is of the nature of a reduction of debt, and we have lent to Native States, Municipalities, &c., £1,570,231, which we shall eventually recover, and which in the meantime has been of great benefit to those whom we have assisted. These disbursements, amounting together to £12,613,817, have been met as follows:—By diminution of cash balances, £1,738,517; by surplus of revenue over expenditure, £805,860; by excess of receipts over disbursements on the sundry accounts which are embraced in our cash transactions, £2,103,007; and by net increase of debt, £9,536,664,—an increase which is considerably less than the sum spent upon Public Works Extraordinary.

"The terms upon which loans have been raised in India and England in 1874, and in India in June last, are as follows:—

"In 1874—Five millions sterling were borrowed in England at £101-7-11¼ for £100 stock. Two and a half crore of rupees were borrowed in India at Rs. 102-12-2 for 100 Rupees stock.

"In 1875—Two and a half crore of rupees were borrowed in India at Rs. 102-3-8 for 100 Rupees stock.

"These terms afford a proof of the high estimation which is entertained of the credit of India in the money market, both here and in England.

"The cash balances in India were estimated to amount at the beginning of the present financial year to £15,700,042. This is held by some to be too high an amount, and the business of the Government could certainly be transacted with lower balances; but I do not consider them to be excessive, considering the magnitude of the liabilities to which the Government of India is exposed, and the difficulty that would be found in suddenly increasing our means in case of need. India is in this respect very differently situated from England. London is the centre of the banking business of the world, and in England the Chancellor of the Exchequer can, if he pleases, safely reduce his cash balance to the amount which is just sufficient to meet the business of the day; but the money market of India is very limited, and it would be hazardous to rely upon it for temporary assistance if a sudden demand should come upon the State, particularly as such a demand would almost certainly occur at a time when there would be a pressure for accommodation on the part of the public. The condition of the Calcutta money market in the beginning of 1873, when considerable funds had to be suddenly supplied to pay for rice from Burma and elsewhere, sufficiently indicated the risk which would be run by reducing our cash balances too low. I entertain a strong opinion that a substantial cash balance over and above what is absolutely required, although it involves a considerable annual cost from loss of interest, is essential to the security of the finances of India.

"The Council will, I think, desire to consider to what causes the satisfactory condition of our finances is to be attributed. First I will observe that great improvements have been effected of late years in our estimates

and accounts. Unless estimates are carefully framed and accounts promptly and accurately rendered, a Government is liable to fall into difficulties without any warning. Nothing can be better than our present system of estimates and accounts, and I am sure Sir Richard Temple will confirm me when I add that the chief credit for this improvement is due to Mr. Chapman, the Financial Secretary to Government.

"The sound condition of our finances, in my opinion, mainly results, on the one hand, from the gradual increase of the revenue in consequence of the increased wealth and prosperity of the country, and, on the other, from the exercise of strict economy in every department of the State. Both these subjects are so important that it is worth while to illustrate them by a few figures.

"We have sources of revenue which mainly depend upon circumstances other than the progress of the wealth and prosperity of India. Our opium receipts depend upon the supply of the drug and the demand for it in China. Although our land-revenue, taking a term of years, depends upon the increased wealth of the country, yet the increase arises from time to time as existing settlements expire, and it would be difficult without going into lengthy explanations to exhibit any comparative statement that would be of value for my present purpose. I will therefore confine myself to the revenue derived from Customs, Salt, Excise, and Stamps, all of which mainly depend upon the general prosperity of the country. I take the net receipts from these taxes since the year 1870-71, because alterations were made in 1869 in the Salt and Stamp Laws as well as in the tariff valuations, which would vitiate the comparison with former years.

"The average annual net receipts from Customs, Salt, Stamps and Excise in the three years from 1870-71 to 1872-73 amounted to £12,691,262 a year. In the years 1873-74 and 1874-75 the receipts rose to £13,035,857 a year. These figures exhibit an increase, in the last two as compared with the first three of the five years, of £350,000, and this increase has taken place notwithstanding some remissions of Salt and Customs duties.

"On the other side of the account we have to meet expenditure which depends but little upon the action of the Government of the day—for example, the interest of our debt, and the charge for superannuation and retired allow-

ances. Taking the expenditure within the control of Government, namely, the cost of Civil Administration, Law and Justice, Public Works, the Army, and the Marine Service, I find that the average annual expenditure for the three years 1867-68 to 1869-70 was £31,833,512; for the three years 1870-71 to 1872-73, £29,748,527; and for the two years 1873-74 and 1874-75, £29,331,793. The average annual expenditure upon these services during the last two years is therefore less by two millions and half than it was six years ago, and less by rather more than £400,000 than it was three years ago.

"These figures show that while, on the one hand, the revenue steadily increases, although not at a very high rate, on the other, the expenditure has been carefully supervised by the Government.

"I can say this without scruple, because the result is mainly due to the attention which was paid to the control of expenditure while Lord Mayo was Viceroy, and it was the constant care of Sir Richard Temple during the time he filled the office of Financial Member of Council. The exertions of the Government have been cordially seconded by the several departments of the Government of India, by the Local Governments, and by all the officers concerned throughout India; and the thanks of the Government of India are due to them for their valuable co-operation.

"While such has been the result of the Imperial finance of the past four years, the Government have not neglected the subject of provincial taxation. In 1872 circulars were addressed to the different Local Governments, and the opinions of officers, both English and Native, were obtained respecting the effects of provincial and local taxation. The answers showed that there were at that time some taxes which were productive of discontent, and which might with advantage be discontinued. In the Madras and Bombay Presidencies the taxes to which most objection was then taken have been readily abandoned by the Local Governments. In the Central Provinces the Pándharí tax,—a direct tax which extended over a very large number of people,—has been greatly modified. The only new measure of provincial taxation which has since been carried into effect is the road cess in Bengal,—a proper and legitimate impost which, owing to the care which has been taken by Sir George Campbell and Sir Richard Temple to apply it gradually and cautiously to the different parts of the Province, is being levied without difficulty, and applied to the advantage of the people who have to pay it.

"The Council will have observed that in the remarks which I have hitherto made I have only cursorily alluded to what is termed 'extraordinary' expenditure. This, however, is a part of our annual expenditure of great importance, a notice of which cannot be properly omitted in any review of the finances.

"I have seen it observed that we have in the last few years 'drifted back into a condition of chronic deficit,' and that the expenditure upon railroads and irrigation works has greatly increased. This misconception may perhaps have arisen from the manner in which the account of our annual revenue and expenditure is published. What is called the 'extraordinary' expenditure is added to the ordinary expenditure of the year, and the result appears at the bottom of the account. Those who have made a study of the accounts are able to appreciate the real facts of the case, but they are not unlikely to be misunderstood by others who have not had time or opportunity for such a study. If the expenditure upon works such as railroads, which are of too great magnitude to be paid for altogether out of the ordinary resources of the Government, and which are in the nature of investments of capital, be added to the ordinary expenditure, the result must be a deficit. But expenditure upon such works belongs to an entirely different category from the ordinary expenditure of the State, and ought to be excluded in drawing a balance between income and expenditure for the practical purpose of showing the real surplus or deficit of the year.

"In England, works of this kind are carried out by private enterprise without the aid of the State; in India this has been found to be impossible. The works themselves are essentially reproductive, in the broadest sense of the term,—I mean that whether or no they may pay the full interest on the capital invested they certainly add to the general wealth of the country—and moreover, in my opinion, they will directly or indirectly recoup to the State the full interest on the capital expended in their construction. Whether the capital be raised by giving a guarantee by the State of a fixed rate of interest to private companies, as has been done in the case of what are termed 'guaranteed railroads,' or the capital be borrowed by the State and the works carried on by the agency of the officers of Government, is, so far as the finances are concerned, one and the same thing.

"In order, therefore, to institute a correct comparison between the expenditure on such works in recent years, and the expenditure which formerly

prevailed, it is necessary to add the expenditure of guaranteed rail-road capital to the direct expenditure by the State. I have had a return prepared showing the sum spent annually upon rail-roads and irrigation works, both from guaranteed capital, and directly by the State, and I will give the Council the results shown by that return. In the four years from 1867-68 to 1870-71 the sum of £25,330,518 was spent by Government and from guaranteed capital together, which gives an average annual expenditure of £6,332,629. In the four years from 1871-72 to 1874-75 there was spent from similar sources a sum of £16,647,871, which gives an average annual expenditure of £4,161,967. The annual rate of expenditure therefore during the last four years has been less by more than two millions than that of the preceding four years.

"But it is of more consequence to consider whether the expenditure which has hitherto taken place has been wise; and whether, although its rate may be diminished, it is at the present time within the resources of the Government.

"The answer to the first question is supplied by the steady progress of the national wealth since the policy of pushing forward railways throughout India was adopted in the time of Lord Dalhousie, and by the sound and satisfactory condition of our finances. In reply to the question whether our present rate of expenditure is within our resources, I need hardly do more than remind the Council of the careful forecasts which have been published showing the calculations upon which the present rate of expenditure has been determined. We considered that, however advantageous the extension of railroads or irrigation works might be, it would not be right to carry them on at such a rate as would require the imposition of fresh taxes, and the rate of expenditure has therefore been based upon calculations showing that any additional interest for which we may be liable on account of money borrowed for the purpose of constructing rail-roads and canals will be met from increased receipts derived from works which have been, or will from time to time be, completed and brought into operation. The calculations originally made in 1873 were carefully checked this year, and the Government have no doubt of their substantial accuracy.

"I may observe, moreover, that we are now in a far better position than we have been at any former time in respect to our liability for the completion of railroads and irrigation works.

"So long as the main lines of communication—such as the East Indian and the Great Indian Peninsula Railways—were in progress, a very large

liability rested upon the Government for their completion; a liability which, as those rail-roads were constructed by guaranteed companies, could not be set aside whatever financial exigencies might arise. Now that the principal lines of communication are completed and the works under construction are of a more limited character, this liability for the future expenditure necessary to complete works under construction is considerably diminished. The rate of progress, moreover, is now almost entirely at the command of Government, because the works are mainly constructed directly by the State, instead of through the agency of guaranteed companies. I believe that in the course of a few years our liability will never at any time much exceed the annual sum which is appropriated to the construction of such works. Thus, in the case of a failure of any great branch of our revenue, or if other calls, such as those of war, should fall upon the Government, we should be able within a very moderate time to contract our expenditure, without subjecting the country to the loss which would be occasioned by abandoning important works before they are brought into remunerative operation.

"I have one more remark to make upon this subject. Although the Government, rightly in my opinion, preferred the more expensive mode of construction of the Indus Valley railroad in order to complete a very important trunk line upon the broad gauge, we feel that the utmost possible economy should be observed in the construction of public works in India. We are therefore carrying out the narrow gauge system of rail-roads for the minor lines of communication; we reconsidered a few years ago the schemes of irrigation works which were then before us, and abandoned, for a time at any rate, works which were projected at an estimated cost of not much less than 9 millions sterling. We have recently, in discussing the projected irrigation works for Behar, impressed upon the Government of Bengal, and upon the Engineer Officers who were engaged in making the plans, the necessity of carefully considering certain minor works which will probably be sufficient for the purposes in view, in lieu of more ambitious schemes which, however creditable they may be to their constructors, are not likely to be remunerative, and indeed are not unfrequently accompanied by serious drawbacks to the advantages which irrigation undoubtedly confers upon most parts of the country.

"The general conclusion to be drawn from a review of the present state of finances of India is highly encouraging. It is dangerous to anticipate the future; but with one exception I see no reason to doubt that, so long as a wise

economy prevails, the prosperous condition of Indian finances will be maintained. The exception to which I allude is the effect of the recent fall in the value of silver. This subject has been alluded to by Sir William Muir, and comes home to most of the English residents in India. Every one who has to make a remittance to England, that is to say who has to make a payment in gold while he receives his income in silver, has to pay more silver, or in other words a larger portion of his income, than he had to pay when the value of silver was higher.

"The Government of India is one of the best abused Governments in the world, and I have seen it asserted that this fall in the value of silver is our fault. This accusation reminds me of the witty lines—

> "Who makes the quartern loaf and Luddites rise?
> Who fills the butchers' shops with large blue flies?"

"I need hardly say that the Government is not a whit more responsible for the fall in silver than Buonaparte was for the flies. Governments can do much—when they interfere with trade they usually do much harm—but they are powerless to control the value of any article in the markets of the world. What the cause of the fall in silver has been, and how long it may continue, is not easy to say. It may be produced mainly by the change in the currency of some European Nations from silver to gold, which has thrown a large quantity of silver into the market. It may arise from the increased production of silver. As long as it lasts, however, the Government of India suffers in common with private individuals. The Government of India has to make large fixed payments in gold out of income received in silver, and a fall in the value of silver raises the cost of those payments. This really governs the item 'loss by exchange' which has of late years figured so heavily on the wrong side of our accounts; for whatever temporary fluctuations in the rate of exchange may be produced by the balance of trade between India and other countries (and the measure which I hope we shall pass to-day by encouraging the export trade may have a temporary effect upon the rate of exchange, and, so far, assist our finances), these fixed payments in gold must in the long run constitute a lighter or heavier charge upon the Indian finances in proportion to the rise or fall in the value of silver.

"The net sum provided in the estimates of the current year for loss by exchange amounts to more than a million sterling, and if the value of silver should continue to fall, this charge will be considerably increased. But I do

not think that this liability seriously affects at present the reasonable prospect we have of a substantial surplus in future, provided—and I cannot repeat this too often—a careful check is kept upon increases of expenditure.

"The condition of the finances of a country greatly depends upon the state of its trade, and the information which Sir William Muir has given us of the progress of the trade of India is highly encouraging.

"Mr. Wilson, who came to India with a long financial experience, in his budget statement of 1860, made at a time of gloom, expressed a sanguine view of the future finances of India; and brought forward, as the principal reason for his favourable anticipations, statistics showing the progress of the Indian foreign trade during the preceding five and twenty years. The most recent returns, when Mr. Wilson made his celebrated budget speech, were those for the year 1858-59. Fifteen years have passed between that year and the year 1873-74, which is the last for which we have complete Trade and Navigation accounts; and it is not without interest to examine how far Mr. Wilson's hopes have been realized.

"The average annual value of the foreign trade of India, including imports and exports of merchandise and treasure, for the five years ending with 1838-39, was £18,638,552.

"For the five years ending with 1858-59, the average annual value rose to £52,700,013.

"The increase was £34,061,461, or at the rate of about £1,700,000 a year for the 20 intervening years, and these were the results which Mr. Wilson stated.

"For the five years ending with 1873-74, the value of our foreign trade has further risen to an annual average of £95,077,948.

"This increase, as compared with the five years ending with 1858-59, was £45,646,103, or at the rate of about £3,000,000 a year for the 15 intervening years. The rate of increase has therefore far exceeded that which Mr. Wilson regarded with so much satisfaction.

"Individual years included in this period have shown considerable fluctuations. The extraordinary development of the export trade in raw cotton during the American War was followed by the usual re-action. The accidents of the

seasons have affected both the produce of the principal Indian staples, and the quantity of them available for export. The lowering of the valuations of cotton goods and metals in 1869 by 15 per cent. has considerably affected the returns, and the imports of railway materials have varied according to the requirements of the State. But the broad result drawn from averages of years, which is the only safe way of making a calculation of the kind, has amply justified Mr. Wilson's anticipations, and proved the soundness of his observation, that let cultivation be extended ever so much, there would be no fear of the want of a market for the produce of the Indian soil.

"Of late years, since the old Indian manufactures decayed owing to competition coupled with the heavy import duties imposed in old times upon their import into England for the purpose of protecting English manufactures, the principal exports of India have been raw products; but I agree with Sir William Muir that there are signs that Indian manufactures may again before long take their place in the market of the world.

"The conclusions which I believe may safely be drawn from the considerations which naturally present themselves in discussing the subject before us are that the trade of India is steadily increasing; that our finances are sound, but that their stability mainly depends upon the exercise of strict economy in our expenditure; and that the relief from taxation that we propose is both safe and wise. For, to adapt the weighty words of our greatest English financier, we abolish restrictions upon the application of capital and the exercise of industry and skill, and the principal object of our policy is to give full and free scope to the energies of the people of India."

The Motion was put and agreed to.

The Hon'ble MR. HOPE moved that the Bill be passed.

The Motion was put and agreed to.

LAW REPORTS BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill for the improvement of Law Reports, and moved that it be referred to a Select Committee with instructions to report in six weeks.

The Motion was put and agreed to.

REFORMATORY SCHOOLS BILL.

The Hon'ble SIR A. ARBUTHNOT introduced the Bill to provide Reformatory and Industrial Schools, and moved that it be referred to a Select Committee with instructions to report in four months. He said that at their last meeting the Council gave permission for the introduction of this Bill. On that occasion he endeavoured to explain the circumstances under which the Government of India had deemed it expedient that legislation should be resorted to on this subject. He showed that so far back as 1861 the matter had engaged the attention of the framers of the Code of Criminal Procedure, and that they had inserted in that Code a provision having for its object the establishment and utilization of Reformatories, but that that provision was in one important respect defective; that the defect had attracted the attention of the Government of Bombay which, in the very year in which the Code of Criminal Procedure was passed, framed and passed through their Council a Bill for remedying the defect, which however was vetoed by the Governor General; that a similar Bill was framed in the following year, which shared a similar fate; that in 1867 the subject again attracted attention and received consideration from the Government of India, and also from the Government of Madras, and elicited from the Governor of that Presidency a forcible and, in SIR A. ARBUTHNOT'S opinion, a very just representation; that more recently the question had occupied the attention of the Lieutenant-Governor of Bengal and also that of His Excellency the President; and that after further consideration the Government of India had come to the conclusion that it was desirable no longer to postpone a resort to legislation for the purpose of enabling the several Local Governments to provide that youthful offenders should be secluded for longer periods than was possible under the existing law, with a view of reclaiming them from the evil habits and associations in which they had been brought up, bringing them under salutary influences, and training them to habits of honest industry. At the last meeting he had omitted to advert to one point of some importance in connection with this Bill, namely, the number of juvenile offenders in any Presidency or Province who could be brought under the influence of a reformatory, if such institutions existed. In the correspondence to which he had referred, it was shown that in the year 1866 in Madras the number of juvenile offenders in our prisons in that Presidency was less than 70; but it was also shown that this small number was, in point of fact, no criterion of the number of youthful offenders who might with advantage be brought under the influence of a reformatory; for it appeared that during the period in question no less than

651 boys had been sentenced to punishment, most of whom probably had been flogged and dismissed, and it was obvious that many of them probably would and might, with great advantage, have been sent to a reformatory. It appeared that in the one institution of this character, which existed at present in India—the Sassoon Reformatory at Bombay—there were at present over 100 inmates, and in the juvenile prison at Poona there was about half that number. According to Sir Richard Temple's estimate, the number of juvenile offenders now in the jails in the Province of Bengal was about 100, and the Lieutenant-Governor anticipated that if a reformatory should be established, about an equal number of juvenile vagrants who were being trained to crime, might be expected to be received into it under the provisions of the Bill which he (SIR A. ARBUTHNOT) was now introducing.

Having made these preliminary remarks, he would request the notice of the Council to one or two of the leading provisions of the Bill. He might, in the first place, observe that the principle of the Bill was very similar to that of the English law bearing upon the subject, which was contained in two Statutes, chapters 117 and 118 of 29 & 30 Vic. The provisions, or perhaps he should say, the ideas, of those two Statutes were combined in the Bill now before the Council. In England, it had been deemed expedient to provide separate legislation for the two different classes of persons with which we proposed to deal. Under the English Statutes two separate classes of institutions existed for those separate classes of persons. Under the first of the English Acts (117 of 29 & 30 Vic.), Reformatory Schools were established and made use of for juvenile offenders who had been convicted of offences. Under the second Statute (Cap. 118) schools, which were called Industrial Schools, were established for the reclamation of boys and girls who were found to be in close association with the criminal classes, to be leading vagrant lives, and to be, in the opinion of the authorities, suitable persons to subject to the influences of an institution of this character. It had been deemed sufficient here to provide in a single Bill for the two classes of persons to whom he alluded. There were one or two points of detail in which the Bill before the Council differed from the English Acts. The English Reformatory Schools Act limited the period during which a youthful offender might be confined in a reformatory to five years, and under that Act the maximum age at which he could be sent to a reformatory was 16 years, and in the case of a youthful offender under the age of 10 years, an order could not be passed sending him to a reformatory unless he had already been sentenced on conviction for some

criminal offence. Under the English Industrial Schools Act the maximum age for sending youths, whom he might designate as juvenile vagrants, or the juvenile associates of criminals, to an Industrial School, was 14 years. Under that Act also, a child under 12 charged with certain offences must go to an Industrial School, and there was a provision in it, which we had not adopted here, which enabled refractory children under the age of 14, at the instance of their parents or guardians, to be sent to an Industrial School. That provision, he had reason to believe, had been found in England to be susceptible of some abuse, and certainly in this country it did not seem advisable to resort to it. Under the Bill now in the hands of the Council the maximum age at which boys could be sent to a Reformatory and Industrial School was fixed at 14 years, and that was only applicable to the cases of boys convicted of the offences which, under the Penal Code, were punishable with transportation or imprisonment, in fact, of offences of the more serious character provided for in the Code. In the case of boys convicted of offences which were simply punishable with imprisonment, the maximum age at which they could be sent to a Reformatory was 12 years. Under the Bill the maximum period for which a boy could be detained in the institution was seven instead of five years, the term named in the English Acts. In those Acts and in the Bill, the maximum age up to which a boy might be detained was specified at 16 years. In the English Acts, while there was a practical limit as to the number of years of detention, there was no limit to the age further than that which was provided by fixing a limit as to the age up to which a juvenile offender might be sent. All these provisions of detail would have to be carefully examined by the Committee to whom the Bill would be referred, and he had no doubt that they would also engage the attention of the various local authorities.

He might mention that it had not been deemed expedient in this country to apply this legislation to the case of girls. Probably the operation of the Bill would principally be confined to schools established and maintained by the Government, but it would also be applicable to private institutions, and it so happened that there was at the present time one existing private institution—the Sassoon Institution at Bombay—to which, no doubt, the Bill would, if passed, become applicable. Provision was also made for enabling Municipal authorities to establish institutions of this character and for bringing them under the operation of the Bill. The only other provision to which he need draw the attention of the Council, was one

contained in section 20, one of the sections relating to Boards of Management, which provided that on every Board there should be at least two Native members. This was a provision which had been deemed to be of importance by the Government. Inasmuch as the proposed legislation was of a novel character, and might be said, in some respect, to affect the liberty of the subject, it was very desirable that the Native community, through their representatives, should have every opportunity of watching the working and operation of the institutions which might be established under the Bill.

The Motion was put and agreed to.

The Hon'ble SIR A. ARBUTHNOT then moved that the Bill be published in the local official *Gazettes* in English and such other languages as the Local Governments thought fit.

The Motion was put and agreed to.

CENTRAL PROVINCES LAWS BILL.

The Hon'ble SIR DOUGLAS FORSYTH moved for leave to introduce a Bill to declare and amend the law in force in the Central Provinces. He said that the necessity for a Bill of this kind would be apparent if he placed before the Council in a very few words a description of the territories which formed the Central Provinces.

The Central Provinces were formed under the Resolution of the Government of India dated 2nd November 1861, and comprised the Province of Nágpur and the Ságar and Narbada territories.

To these were added Sambalpur with its dependencies in 1862, the District of Nimár in 1864, and the Bijeragogarh territory in 1865.

By the death of the last Bhonsla Rájá in 1853, who left no heir, the Nágpur Province lapsed to the paramount power, but for some time previous to this event a considerable supervision over the administration had been exercised by the British Resident.

In fact, for a period of some twelve or thirteen years, during the minority of Rájá Raghují III., the administration of the country was conducted by the

British Resident under the orders of the Governor General and by the aid of British officers.

Sir R. Jenkins, the Resident, issued orders and proclamations laying down a system of procedure and principles of law, based on general instructions issued by the Supreme Government.

Under that system the people were secured in their own laws based on the customs and usages of the country, but in *criminal* punitive law the system was based on the Bengal Regulations.

One or two rather objectionable customs were however abolished, such as the auction sale of widows and the levy of a tax on the remarriage of widows and the putting to death of witches, whilst an order was given to punish persons who should denounce another as a wizard or witch.

Sir R. Jenkins' system of administration seemed to have been retained to a considerable extent, even after the Rájá attained his majority; and up to the time of the death of the last Chief in 1853 and on the assumption of the administration of the country by the Government of India, Sir R. Jenkins' system was authoritatively re-introduced and subsequently was somewhat modified by the introduction of the Panjáb civil judicial system with some improvements borrowed from Assam.

The Ságar and Narbada territories were acquired by treaty: the former in 1817 from the Peishwa Báji Rao; the latter in 1818 from the Rájá of Nágpur. He would quote from the Resolution of the Government of India:—

"These territories have been transferred at various times from one Government to another. They were originally under the Supreme Government; subsequently they were placed under the Lieutenant-Governor of Agra. Again in 1842 the general control of them was vested in a Commissioner and Governor General's Agent in direct communication with the Supreme Government, while the supervision of fiscal and judicial affairs remained with the Sadr Board and Sadr Court at Agra respectively. Again at a later date the general jurisdiction was once more entrusted to the Government of the North-Western Provinces, under which it remained up to the time of annexation."

These territories were first governed by special rules issued to the Commissioners, and subsequently by the spirit of the Regulations of Government applicable to the Province: though in a report written in 1834, Mr. Bird

declared that of the British officers supposed to be conducting the administration in accordance with the spirit of these Regulations, not one had read a word of them, and the spirit and all that was valuable in the Regulations was unknown.

Subsequent to this sweeping condemnation and before their incorporation with the Central Provinces, the Ságar and Narbada territories had the good fortune of being administered by officers of very high distinction, such as General Sleeman, Sir D. McLeod, and Mr. A. Roberts, to the last-mentioned of whom the Province was indebted for a Code of Civil Procedure, which was adopted to a very great extent in the formation of the Panjáb Civil Code, which in its turn was sent to the Central Provinces as a model for guidance.

Sambalpur with its dependencies lapsed to the British Government in 1849, up to which time the civil, police and judicial administration had been conducted by the Rájás in their own way; and if he might trust Mr. Nicholls, a Civilian who had drawn up a most valuable work on the Law, special and local, of the Central Provinces, and from whom he was quoting largely now, it would appear that until the Province was made over to the Chief Commissioner, Nágpur, in 1862, it was governed by our own officers very much in the same manner. Mr. Nicholls said that Sambalpur was treated as what was called a political mahál. If justice was administered, it was, as in Nimár, justice without the niceties of law, and the spirit of the laws and regulations was observed, if observed at all, in a Pickwickian sense. In Nimár our first acquisitions were by treaty from the Peishwa in 1818, and the desolation of the tract acquired was such as to give rise to the saying that "there is not a crow in Kanapur Beria."

As Mr. Nicholls remarked, the political condition coupled with the original desolation of the country, and superadded to the curiously vagrant habits or instincts of a very large portion of the inhabitants, formed at all events a fair excuse for the almost entire absence of authoritatively imposed laws and regulations in Nimár.

Even so late as 1862, Sir D. Forsyth found in the annual report the following important postscript:—

"There is no authorized Code of Civil Procedure in Nimár. Improvements have been introduced from time to time and in some instances the spirit of Act VIII of 1859 is acted upon. But with the weak establishments in Nimár we can attend to justice only, and not to justice and the niceties of the law combined."

Nimár was incorporated with the Central Provinces in May 1864.

Bijeragogarh was first brought under the management of political officers in 1848 during the minority of the last Chief, Surju Pershád. When he attained his majority, he was placed in full possession of his hereditary estate, but shortly afterwards the mutiny broke out and he was induced to rebel. His territory was confiscated and placed under the charge of the Governor General's Agent in Bandelkhand and was finally incorporated with the Central Provinces in 1865.

Such was a very summary glance at the history of the various tracts which went to make up the present administration known as the Central Provinces.

In his report for 1862-63, the then Chief Commissioner, Sir Richard Temple, thus described the previous judicial condition of these Provinces :—

"In other Non-Regulation Provinces even where there were no laws there was yet a rule and system clear and complete. But in the territories newly brought together under the general designation of the Central Provinces, there could be no universal procedure, no general regulation, no complete legal foundation for the conduct of affairs. There were up to the year 1862-63 a variety of laws, rules and systems, each having force more or less in the several parts, but none having force over the whole."

In 1866 the Chief Commissionor addressed the Government of India on the subject of declaring what Acts and Regulations should be considered applicable, and a long correspondence ensued. He might here remark that in the Resolution of the Government of India, the administration of the Central Provinces was declared to be formed on a system similar in most respects to that which existed in the Panjáb and Oudh.

When, therefore, it became necessary a few years later to pass an Act of the Legislature to declare what the law was in the Panjáb, and the same is now being done in respect of Oudh, it followed, as a necessary consequence, that the same operation must be performed with regard to this younger Province.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill for the improvement of Law Reports,—the Hon'ble Sir A. Arbuthnot, Sir D. Forsyth, and Mr. Hope and the Mover.

On the Bill to provide Reformatory and Industrial Schools,—the Hon'ble Mr. Hobhouse, the Hon'ble Sir W. Muir, Sir D. Forsyth and Mr. Hope and the Mover.

The Council then adjourned to Thursday, the 19th August 1875.

SIMLA,
The 5th August 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla,—L. D.—13-8-75.—300.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 19th August 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble Ashley Eden, C. S. I.
The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.
Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.
The Hon'ble Sir Douglas Forsyth, K. C. S. I.
The Hon'ble T. C. Hope.

CENTRAL PROVINCES LAWS BILL.

The Hon'ble SIR D. FORSYTH introduced the Bill to declare and amend the law in force in the Central Provinces, and moved that it be referred to a Select Committee with instructions to report in two months. He said that when he had asked for leave to introduce the Bill, he explained that the Central Provinces was composed of various territories, the different Regulations applying to which were in some confusion, and that the present Bill, which was now prepared at the desire of the Local Government and to a great extent by the Judicial Commissioner, was intended to remove all doubts and difficulties with reference to the application of those laws.

The Bill was exceedingly short, and contained only ten sections. It repealed certain obsolete enactments, and declared what laws were in force throughout the Central Provinces. In order to preclude doubts which might arise from the way in which additions had from time to time been made to those Provinces, section 4 made the following declaration:—

"Every Act of the Governor General in Council which extends, or can by notification be extended, to the territories which were under the administration of the said

Chief Commissioner at the time of the passing thereof, shall extend, or may by notification be extended, as the case may be, to all the territories now under the administration of the said Chief Commissioner."

There were no special laws applicable to the Central Provinces, as was the case in the Panjáb, such as the law of pre-emption, or the law relating to vagrants; and the work of the Committee, to whom he trusted this Bill would be referred, would consist chiefly in overhauling the different Acts and Regulations in the Schedules to see that they were correct. The Bill left untouched the revenue system of the Central Provinces, which would probably be dealt with by some other enactment.

The Motion was put and agreed to.

The Hon'ble SIR D. FORSYTH moved that the Bill be published in the *Central Provinces Gazette* in English and such other languages as the Local Government might think fit.

The Motion was put and agreed to.

OPIUM BILL.

The Hon'ble SIR W. MUIR moved for leave to introduce a Bill to amend the law relating to Opium. He said that the law was defective in various parts of India in respect of the control which the Government should have over the growth, manufacture, possession and transport of opium. In Bombay the cultivation of opium was prohibited, and its transport was practically under check; but the legal power for enforcing the action of the State in the matter was imperfect. In Madras, where the same practice prevailed, the state of things was still more defective, there being no law to enable the State to interpose in respect to the cultivation, manufacture, possession and transport of opium. Both these Administrations had had it in contemplation to introduce projects of law to remedy the want; but the subject of opium being an imperial one, it was thought better that the law should be uniform throughout India, and they were therefore requested to stay their action in respect to the introduction of the Bills which they had before them. The law was also in some respects uncertain in other parts of British India, that was to say, with regard to the new Administrations which had been formed in recent times. Advantage would be taken in the Bill to remove these doubts by having a uniform law which would be applicable to the whole country, and which would give the authorities the necessary power to interpose in the matter as he had explained.

Opium being the subject of imperial revenue, there appeared no doubt that the proposed legislation should be by this Council, and should be also of an imperial character. At their next meeting he would take the opportunity of introducing the Bill and of explaining the provisions of the proposed measure.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to declare and amend the law in force in the Central Provinces—The Hon'ble Messrs. Hobhouse and Hope and the Mover.

The Council then adjourned to Thursday, the 2nd September 1875.

SIMLA,
The 19th August 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 2nd September 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble Sir Douglas Forsyth, K. C. S. I.

The Hon'ble T. C. Hope.

OPIUM BILL.

The Hon'ble SIR W. MUIR introduced the Bill to amend the law relating to Opium, and moved that it be referred to a Select Committee with instructions to report in three months. He said that in accordance with the permission he had received at the last meeting of the Council, he had now the honour to introduce the Bill to amend the law relating to Opium. On that occasion he had explained the necessity which existed for the measure. The provisions were very simple. Under section 3 it was proposed to enact that the cultivation and manufacture of opium, its possession, transport or sale, should be permitted only in accordance with rules framed under the Act; and by section 4 the Local Governments were empowered, with the sanction of the Governor General in Council, to make such rules. The remainder of the Bill provided appropriate penalties for contravention of the law. These were in accordance with the provisions of the law as they now existed in Bengal for the control of the cultivation, possession, transport and sale of opium.

The present measure had no bearing whatever on the system for realizing the Government revenue from opium. Although the measures now proposed had heretofore been in force only on this side of India, yet they were equally required everywhere. The advocates of the Bombay system, under which the Government revenue was realized by an export duty, disapproved of the State manufacture and monopoly prevailing in Bengal, and desired that endeavour should be made to substitute the export-duty arrangement for it; and he himself had long shared these views. But if such experiment were to be made to-morrow in any part of Behar, the North-Western Provinces or Oudh, it would be necessary to have equally stringent checks as now existed in Bengal—perhaps checks of even greater stringency—for controlling the cultivation and manufacture, the possession, transport and sale of opium; and these checks were equally required under the existing system in Bombay and Madras. The Bill therefore, as now introduced, had no reference whatever to the policy of the Government in this respect, either one way or the other.

The Motion was put and agreed to.

The Hon'ble SIR W. MUIR also moved that the Bill be published in the several *Gazettes* of the Local Governments in English and such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

MERCHANT SEAMEN'S ACT AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill to amend the law relating to Merchant Seamen. He said that the Council were aware that we had already upon the stocks a Bill for the general consolidation of our law relating to Merchant Shipping and for introducing certain amendments into it. But that Bill had been suspended, owing to the delay in proceeding with a similar Bill which was before the British Parliament. The subject was one in which it was necessary that the Indian legislation should be framed very carefully with reference to the Imperial legislation, because, not only was the subject-matter closely related, but the Imperial Acts, to a great extent, included India, and therefore we had Imperial laws in working, and in detailed working, in India. Some of those laws were subject to the operations of this legislature; others of them were not, and therefore we had to be exceedingly careful in all our legislation to see what was the course of legislation in England. Under those circumstances the Secretary of State was of opinion, some years ago, that we had better not proceed with our general

consolidation Act, and it was waiting at this moment for the action of the British Parliament. From time to time, however, isolated matters had arisen with regard to which it was desirable to amend the law; and the Council would remember that only in the beginning of this year we passed an Act for the purpose of amending our Merchant Shipping Act with reference to one separate but important topic, namely, the constitution of tribunals for enquiries into casualties affecting ships and the conduct of officers.

There were one or two other points, none of them perhaps of very much importance, but all requiring some amendment of the law, with which we found ourselves in a position to deal. Therefore we thought it better to deal with those as the opportunity had arisen instead of waiting, perhaps for two or three years, until we were enabled to consolidate the whole of the law. He would just mention the principal of those topics.

One related to the subject of distressed seamen. In the English Acts there were certain provisions which enabled the Governments of all British possessions to send British seamen, who were in a state of distress, back to England on board British ships, and to provide for the payment of the expenses out of certain funds over which the Board of Trade had control. Well, it had been found that disputes arose with respect to the fact whether a seaman was a distressed seaman or not, and it had occurred that the Master of the vessel objected to receive the seaman on the ground that he was not. It was obvious that such a dispute might arise in any case, and when those disputes had once arisen, they had a great tendency to multiply themselves. They all arose under a critical state of circumstances; that was, when a ship was just going to sail, and when it was very inconvenient to decide the dispute by any lengthened process. Therefore it was proposed in the first place to provide a summary method of deciding such disputes, and, in the second place, to impose a penalty payable in India on the Master of any vessel who, after the proper certificate was given that the seaman was a distressed seaman, declined to receive him on boardship.

The next topic related to the discharge of seamen, and to seamen who were imprisoned in India. It was obvious that if there was an unlimited power of discharging British seamen in foreign countries, a great many of them would simply become a burden upon the society of the country where they were discharged. Now the English Merchant Shipping Act provided, in order to meet that difficulty, that no seaman should be discharged without the sanction of certain authorities in the country where it was proposed to discharge him. But that

mere requisition of sanction had been found insufficient. There was no penalty attached to it which we could enforce in this country, and besides that, there had been disputes of rather a grave nature respecting the power of the authority in question to withhold his sanction under certain circumstances; that was to say, it had been disputed whether it was a purely discretionary power, or a ministerial power which he was compelled, as a public servant, to exercise under certain circumstances. We proposed therefore, in the first place, to make our law quite clear upon that subject, and to put it beyond doubt that the power was simply a discretionary power. He (MR. HOBHOUSE) believed it to be a discretionary power according to the present law. It was certainly held so in England, and the Board of Trade had issued instructions in which they had asserted that the matter was one beyond dispute. The matter, however, was not beyond dispute in India, for a judgment had been passed by one Court of Law, luckily opposed by the judgment of another, to the effect that the power was a ministerial and not a discretionary power. It was proposed however to make that point clear. It was also proposed to add a penalty payable in India in case the Master of a ship discharged any seaman without the requisite sanction.

But one great temptation for the discharge of seamen here was found to be the unlimited facility that existed for getting lascars to serve on boardship for the voyage home. Some Masters preferred to have those lascars, partly because they were less expensive than seamen, partly for other reasons; and therefore it was proposed by the Government of Bombay (and their suggestion was adopted) that power should be given to the Local Governments to prohibit the engagement of Native seamen without sanction from the Government; at all events in cases in which British seamen had been discharged. That, it was conceived, would strike at the root of the evil.

Another mode in which British seamen were detached from their ships was when they got into prison, and it was alleged that the Masters who desired to get rid of men preferred complaints against them for breaches of discipline and other petty offences, which probably would not have been preferred if the Masters did not desire to get rid of their men. Now in section 88 of Act I of 1859, power was given to Magistrates to release all sailors imprisoned for breaches of discipline if the Masters of the ships were willing to take them back; but it was often found that the Masters were not willing to take them back: in fact, the very object of getting them into prison was that they should be there when the ship was sailing, in order that the ship might obtain lascars and so depart from India. That mischief would partly be met by the proposal that the Government should have a veto

on the engagement of Native seamen; and it was proposed further to meet it by giving power to Port authorities to call upon Masters to accept back those seamen who were imprisoned for petty offences, and if they did not choose to accept them back, to require them to deposit a sufficient sum to cover the expense of the subsistence of the men during their stay in India, and of their passage home. That, it was thought, would be a test of the *bona fides* of the objection to receive back the men.

Then, with regard to the subject of desertions, there was at present a defective machinery for giving notice to the Government of desertions directly they took place, and we proposed to require Masters of ships to inform Government whenever a desertion took place. We proposed also that, when a sailor was imprisoned for desertion, the Master should deposit in the local Shipping Office his wages and effects, and that there should be some machinery for settling claims between Masters and men.

Another topic we proposed to deal with was the increase of space on board ships. It seemed to be the prevailing opinion that the present law did not provide a sufficient amount of space. It was not intended to introduce any new principle of legislation on this point. Measurements of space were given by the present Merchant Shipping Act, and it was proposed slightly to increase the space required.

The Motion was put and agreed to.

BURMA COURTS BILL.

The Hon'ble MR. HOBHOUSE also presented the Final Report of the Select Committee on the Bill to consolidate and amend the law relating to the Courts in British Burma.

The following Select Committee was named—

On the Bill to amend the law relating to Opium—The Hon'ble Messrs. Hobhouse, Eden, and Hope, and the Mover.

The Council then adjourned to Thursday, the 16th September 1875.

SIMLA;
The 2nd September 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Thursday, the 16th September 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*
His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.
Major-General the Hon'ble Sir H. W. Norman, K. C. B.
The Hon'ble Arthur Hobhouse, Q. C.
The Hon'ble Sir W. Muir, K. C. S. I.
The Hon'ble Ashley Eden, C. S. I.
The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.
Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.
The Hon'ble Sir Douglas Forsyth, K. C. S. I.
The Hon'ble T. C. Hope.

BURMA COURTS BILL.

The Hon'ble MR. HOBHOUSE, in moving that the Final Report of the Select Committee on the Bill to consolidate and amend the law relating to the Courts in British Burma be taken into consideration, said that he ought rather to move that both reports of the Committee, the final and preliminary reports, be taken into consideration, because though the preliminary report had been before the Council several months, it had not been brought up formally for consideration. The fact was that this Bill had been for a considerable time before the Council, having been introduced as long ago as the month of April 1874. This was the second time, since he had been in India, that he had to introduce a Bill to amend the Burma Courts Act. There was considerable difficulty always in making complete arrangements for a system of Courts, because there were a great many small points to attend to, and many things were not found out until the Courts had begun to work. But in British Burma there was a peculiar source of complication, for whereas in other Provinces—

Bengal for instance—there was only one Supreme Court of Judicature, in British Burma there were no less than four, having different areas of jurisdiction, either geographical or legal, or mixed geographical and legal. There were the Judicial Commissioner, the Recorder of Rangoon, the Special Court which consisted of the Judicial Commissioner and the Recorder of Rangoon sitting together, and the High Court at Calcutta. All those tribunals were in their several ways Supreme Courts of Judicature; and that circumstance made the arrangements for British Burma peculiarly complex and difficult. Therefore it was no wonder that every now and then we had applications from the judicial authorities of British Burma saying that something was wanted which they had previously not observed, or that something which had been put into the Act did not work with perfect smoothness.

When he introduced this Bill, there were three objects for which legislation was wanted. One was that certain jurisdiction had been given to Deputy Commissioners, and it was found that the provision for that jurisdiction did not quite answer the wants of the Province, for in some districts it was not desirable to have an officer as high as a Deputy Commissioner; but there was an officer below the rank of Deputy Commissioner, and it was desirable that that officer should exercise the jurisdiction that the Act attributed only to Deputy Commissioners. Secondly, it was desired to relieve the Recorder of Rangoon from certain duties, of a somewhat mechanical nature, in the way of recording evidence, writing judgments, and so forth, which were imposed upon the Judges by the Code of Civil Procedure, and with which it was very undesirable to occupy the time of such a Judge as the Recorder. The third object was to revive certain Acts which were repealed by the first Burma Courts Act passed in 1872, but which we found, in process of time, to be wanted for the purposes of British Burma.

When the Bill went into Committee, they had a considerable number of suggestions from the authorities in British Burma, who also desired that as so much alteration had been made by the amending Act of 1873, and would be made by the new amending Act, the original Act should be redrawn with the incorporation of all the alterations. To that desire the Committee acceded, and they made a preliminary report in February last showing that the Act had been redrawn, and exhibiting in detail all the substantial alterations that had been introduced. The draft was then republished. It had since undergone further criticism in British Burma, and had also had the advantage of the presence of the Hon'ble Mr. Eden here. The Committee had now made a further report, and the time was come for the final consideration of the Bill.

The alterations that had been made in the existing Acts were very numerous, but mostly of a very small kind. He hoped that they would be useful, and that they would prove sufficient for a time at all events. It would not, however, be very edifying to the Council if he were to attempt to carry them through the detailed alterations that had been made. The only changes which, as it seemed to him, could be at all called alterations of principle were as follows. The Bill gave to the Recorder of Rangoon an enlarged jurisdiction which it was found desirable that he should have. It gave him an increased area of jurisdiction, which the growth of the large towns in British Burma rendered it expedient that he should have. Rangoon was now a considerable centre of commerce; a large amount of shipping came into the harbour, and that rendered it necessary to have a Judge who should decide upon two classes of cases. One class was that of admiralty cases; and it was proposed to give to the Recorder admiralty jurisdiction throughout the territorial waters of British Burma. But inasmuch as the jurisdiction was entirely new and in many respects rather of a special and important kind, it was also proposed to give an appeal to the High Court at Calcutta. The other class was that of insolvency cases. Of course, as commerce increased, there would be a greater number of defalcations amongst commercial men, and therefore it was thought desirable to set up an insolvency jurisdiction for the four principal towns of British Burma, namely, Rangoon, Maulmain, Akyab and Bassein.

He thought that those were the only two matters of principle involved in the alterations. Among the larger details of the alterations, besides the three original objects he had referred to, he might mention that the area of the Recorder's jurisdiction had been enlarged in some other respects—he meant the legal, and not the geographical area. For instance, the Bill gave him power to try certain cases which clearly ought to be tried at Rangoon, but which, under the existing Acts, did not fall within his jurisdiction for the reason that the cause of action had arisen elsewhere. In these cases however the parties or their agents were resident at Rangoon, evidence was procurable at Rangoon, and all circumstances pointed to the convenience of trying cases at Rangoon. The Bill also gave to the Recorder the powers of a High Court over Magistrates within the legal area of his jurisdiction and over the Small Cause Courts within the same area.

Then the Bill altered the mode of procedure in the Special Court. When the Act of 1872 and the amending Act of 1873 were passed, no staff of officers

was provided for that Court. The consequence was that although the Court could sit and hear appeals, it could not do many things which a Court had to do by its ministerial officers; and the Acts at present on the Statute-book provided for those things being done either by the Judicial Commissioner or the Recorder of Rangoon. Now the Chief Commissioner had seen his way to provide a proper staff of officers: the Bill, therefore, altered the procedure by giving the Special Court power to do those things which the two other Judges were ordered to do before.

Then, again, some more extensive powers had been given both to the Judicial Commissioner and the Recorder of Rangoon with respect to the matters of costs in their Courts and of the legal practitioners who practised before them; and the Bill went on to relieve both the Judicial Commissioner and the Special Court from the same class of mechanical duties from which he (MR. HOBHOUSE) had already said it had been found expedient to relieve the Recorder.

Those were the larger details of the Bill now before the Council, and when he had called those the larger details, the Council might imagine what the smaller details were. They were in fact of a purely professional and technical kind; they were all mentioned in the reports, and it would, he thought, be no use to draw the attention of the Council further to them. The whole of the Bill had been prepared in very close communication with the authorities in British Burma, both judicial and executive, and, as he had said, the matter had derived great advantage from the presence of Mr. Eden at Simla during this season. MR. HOBHOUSE could only hope that it would be the last amending Act that he should have to introduce into the Council for British Burma. He could not believe that it would be the last that the Council would have to consider; because, as he had remarked, the present arrangements were very complicated, and he had no doubt that, as time went on, the authorities of British Burma would see their way to simplifying them. However, that was a matter for the future; he hoped that, for the present, the proposed Bill would be the means of making things work smoothly in British Burma.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

PANJÁB CHIEF COURT APPEALS BILL.

The Hon'ble MR. HOBHOUSE also moved for leave to introduce a Bill to provide an appeal from certain decrees of the Chief Court of the Panjáb. He said that this was a matter of great simplicity. The Chief Court of the Panjáb, as we all knew, consisted of three Judges. They were principally an Appeal Court, but they had coming before them a certain amount of original business. The amount was not very large in quantity; but of course in quality it consisted of cases of the greatest difficulty and magnitude that arose in the Panjáb. Well, those cases, according to the distribution of business, were frequently heard before a single Judge; but the Panjáb Chief Court Act provided no appeal from that single Judge to the Chief Court itself. The consequence was that cases, which were heard in the first instance before a single Judge, were subject to no appeal whatever within the limits of India, and those cases had to go up to the Privy Council if the parties desired to appeal them at all. He need hardly enlarge upon the inconvenience of that practice. Of course it might be said that cases should be heard before two or before the three Judges of the Chief Court, and so a greater amount of legal power should be brought to bear upon them. But, in the first place, every Court was the best judge of its own method of transacting business, and the Chief Court considered that the business ought to be transacted in many cases by a single Judge; and in the second place, arguing from his own experience of legal business, he thought it right that the bulk of business of the first instance should be transacted by a single Judge, and he believed that such business was much better done by a single Judge than by a plurality of Judges. He therefore thought that it was quite right that the Panjáb Chief Court should go on transacting business of the first instance by a single Judge, and the Judges themselves were extremely desirous that there should always be an appeal from the judgment of that Judge, and that the judgment should be checked by his colleagues. It was therefore proposed to introduce a Bill for the purpose of providing an appeal from the judgment of a single Judge or even two Judges of the Panjáb Chief Court to the full Court.

The Motion was put and agreed to.

The Council then adjourned to Thursday, the 30th September 1875.

SIMLA;
The 16th September 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 29th September 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble T. C. Hope.

LAW REPORTS BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill for the improvement of Law Reports. He said that the Committee had made no change in the Bill and had recommended that it be passed.

PANJÁB CHIEF COURT APPEALS BILL.

The Hon'ble MR. HOBHOUSE also introduced the Bill to provide an appeal from certain decrees of the Chief Court of the Panjáb, and moved that it be referred to a Select Committee with instructions to report in a week. He said that Act IV of 1866, which regulated the Chief Court of the Panjáb, provided no appeal from decrees made by a single Judge of the Court in the exercise of original civil jurisdiction. The consequence was that appeals from such decrees would only lie to the Judicial Committee of the Privy Council, and much waste of time and money was caused by this state of things. The Bill which he now introduced was intended to supply the defect which he had indicated, and the opportunity had been taken to enable the Appellate Court to remand suits and order retrials, and to empower the Judges to make references to a full Bench as to points of law. The Bill had been prepared in close communication with Mr. Justice Boulnois and Mr. Justice Campbell, and he

(MR. HOBHOUSE) desired to express his obligations to those learned persons for the assistance which they had afforded. That circumstance also justified his proposing so short a time for the Committee's report. It was desirable to pass the Bill quickly, because the hearing of several cases had been postponed in expectation of this alteration in the procedure of the Chief Court. And seeing the nature of the Bill, and with whose assistance it had been prepared, it was difficult to suppose that anything would be gained by publication or any lengthened consideration.

The Motion was put and agreed to.

MERCHANT SEAMEN'S LAW AMENDMENT BILL.

The Hon'ble MR. HOBHOUSE also introduced the Bill to amend the law relating to Merchant Seamen, and moved that it be referred to a Select Committee with instructions to report in three months. He said that the object of this Bill was to make a number of small but important changes in the law relating to Merchant Seamen, which could not conveniently be postponed until that law was consolidated and amended. He had mentioned the points when he procured leave to introduce the Bill and had now to show how the Bill dealt with them.

The first object was to determine disputes whether or not a seaman was "distressed" within the meaning of the sections of the Merchant Shipping Act, 1854, relating to distressed seamen. For that purpose, section 3 provided that the Local Government might certify of any seaman that he was distressed, and that the Master of a ship should be bound to receive such a seaman, and it imposed a penalty in case of refusal.

The next object was to put a check upon the practice of discharging European seamen, which, it was alleged, was often done merely for the purpose of supplying their place with lascars. Sections 4 and 5 were directed to this object. Section 4 repeated the existing law to the effect that no Master should discharge a seaman without written sanction from a Government officer. But it somewhat varied the terms of the existing law in order to preclude a doubt which had been raised whether the officer had complete discretion to give or withhold his sanction. And whereas at present there was no special penalty for breach of this law, it was now proposed to impose one. Section 5 gave the Local Government power to prohibit a Master from engaging Native seamen. This would put a great reserve of power into the hands of the Government, which would probably be used seldom, but which it might use on finding that improper and causeless discharges of European seamen were taking place.

By section 6 provision was made that where a European seaman deserted, the master or owner should report the desertion to the Local Government.

Sections 7 and 8 extended the provisions of section 88 of Act I of 1859, and contained certain rules as to European seamen imprisoned for breaches of discipline or other petty offences on the complaint of the Master. The previous sanction of the Local Government was in that case rendered necessary to the engagement of Natives of India. The Local Government was also empowered to tender an imprisoned seaman to the Master, and, if the Master refused to receive him, the Master might be required to deposit, not only the wages, &c., due to the seaman, but also such sum as might be sufficient to defray the cost of his passage home and of his lodging and subsistence till he started.

The Bill then contained a clause (section 9) slightly increasing the space required by Act I of 1859, section 70, for European and for Native seamen.

Lastly, a clause had been added to remove a doubt which had been raised as to the meaning of an expression in section 54 of that Act. That section declared in effect that where a seaman's wages were payable in India under an agreement wherein the wages were expressed to be payable in pounds sterling or some other non-Indian denomination of coin, the seaman was entitled to the amount estimated according to the "established par value" of the coin. The Bill declared that the expression in question should be taken to mean the rate of exchange for the time being fixed by the Secretary of State for India in Council to regulate transactions between himself and the Government of India. MR. HOBHOUSE believed that this was the true construction of the Act, and it certainly was the one which had been acted on; but it was not clear. A high legal authority had expressed a contrary opinion, and it was desirable to place the matter beyond question.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be published in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette*, and the *British Burma Gazette*.

The Motion was put and agreed to.

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. HOPE moved that the Hon'ble Sir W. Muir and the Hon'ble Sir A. J. Arbuthnot be added to the Select Committee on the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-Revenue.

The Motion was put and agreed to.

OBSOLETE ENACTMENTS REPEAL BILL.

The Hon'ble Mr. Hobhouse moved for leave to introduce a Bill for the repeal of certain obsolete enactments. He said that the Council were aware that the Legislative Department had undertaken the task of producing a revised edition of the Acts and Regulations now in force in British India. Of this work the first volume, containing the general Acts of the Governor General in Council from 1834 to 1863, both inclusive, was now in the hands of Hon'ble Members; the first half of the second volume had already been printed; and it was hoped that the remainder of the general Acts (by which he meant Acts extending or extendible to the whole of British India or to the Presidency Towns) would be published early next year. It was proposed then to publish a volume containing (*a*) the unrepealed Madras Regulations, (*b*) the Acts of the Governor General in Council relating exclusively to the Madras Presidency, and (*c*) the Acts of the Local Council. In preparing for this volume it had been ascertained that, notwithstanding the numerous repeals effected by Acts X of 1861, XVII of 1862 and III of 1873, and also by Madras Act II of 1869, there still remained in the surviving Madras Regulations a not inconsiderable amount of obsolete matter. The primary object of the Bill which he now asked leave to introduce was to excise this matter. At the same time the opportunity would be taken to remove from the Indian Statute-book certain Acts and portions of Acts of the Governor General in Council, and certain fragments of Bombay Regulations and Acts, which might now be safely dispensed with.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to provide an appeal from certain decrees of the Chief Court of the Panjáb: The Hon'ble Mr. Hope and the Mover.

On the Bill to amend the law relating to Merchant Seamen: The Hon'ble Mr. Eden, the Hon'ble Sir A. J. Arbuthnot and the Hon'ble Mr. Hope and the Mover.

The Council then adjourned to Wednesday, the 13th October 1875.

Simla;
The 29th September 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Wednesday, the 13th October 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding.*

His Excellency the Commander-in-Chief, G. C. B., G. C. S. I.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble Arthur Hobhouse, Q. C.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble T. C. Hope.

LAW REPORTS BILL.

The Hon'ble MR. HOBHOUSE moved that the Report of the Select Committee on the Bill for the improvement of Law Reports be taken into consideration. He said that this was a matter on which he need not make any observations to the Council, because he had already explained that the Bill was one which consisted solely of what we had already discussed in the early part of the year so far as it had not been disapproved of by the Secretary of State. The Select Committee had made no alterations in the Bill as introduced.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be passed.

The Motion was put and agreed to.

PANJÁB CHIEF COURT APPEALS BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to provide an appeal from certain decrees of the Chief

Court of the Panjáb, and moved that the Bill be taken into consideration. He said that this was also a matter on which he need not trouble the Council with any remarks, as he had explained already the extremely simple character of the Bill and how it had been prepared under the auspices of two of the Judges of the Panjáb Chief Court themselves. The Select Committee had proposed no alterations in the Bill.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be passed.

The Motion was put and agreed to.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships and Coasting Steamers. He said that this was a matter in which there was no motion before the Council, but he should like to make a few remarks upon the alterations that the Select Committee had made in the Bill, because they were of an important character, affecting the principle of the law, and they were not in contemplation when he introduced the Bill. The fact was that this was one of those numerous cases which were begun by aiming at some small changes in the law and at consolidation, and then in the progress of the work before the Committee they found that it was necessary, or at all events expedient, to make a much larger alteration than was at first contemplated. He would briefly state to the Council what the points were in which the Committee had been induced to alter the measure as introduced.

In the first place the law on this subject was governed by three Acts of Council: Act XXV of 1859, Act XII of 1870, and Act XII of 1872. Act XXV of 1859 applied solely to the Bay of Bengal and only to certain specified voyages within that Bay. The voyages to which it applied were those which took place from any port in Madras or Chittagong, or from any port in Orissa to any port on the Eastern Coast of the Bay of Bengal, or the Straits of Malacca, or in Ceylon, and also the reverse voyages, excepting that, for some reason which MR. HOBHOUSE could not explain, the voyages from Ceylon were not included. That Act applied to all sorts of vessels whatever number of passengers they might carry.

Then came Act XII of 1870, and that applied to voyages to or from the westward, namely, those which took place from any port in India to either the Red Sea or the Persian Gulf, or the reverse way. The scope of the Act was affected by a definition of the term "Native passenger ship." That term was said only to mean a ship which carried more than thirty passengers and which was plying from any port in India to any port in the Red Sea or the Persian Gulf, and *vice versâ*. The principal part of the Act of 1870 applied to those Native passenger ships. Then there was a separate chapter altogether which applied to what were called "coasting steamers." Those were steam-vessels carrying passengers without any limit of number whatever on coasting voyages from or to any port in British India. Those were the only provisions which affected the purely British Indian traffic. All the other provisions, whether under Act XXV of 1859 or Act XII of 1870, were for certain voyages, most of which were beyond British India and which were all long voyages. Nor did Act XII of 1870 contain anything about sailing vessels which might make coasting voyages; as regarded such voyages, it applied entirely to steamers. If a steamer carried only one passenger, it fell under Act XII of 1870; and it said that those steamers should have certificates which should state the number of passengers which the steamers should carry, but no measurements were given by which licenses should be adjusted. That was a state of the law which was very unsatisfactory, and it was found to bear very hardly on the good class of steamers, because, not applying at all to sailing vessels, it tended to drive passengers into making their voyages in very rickety craft.

So an Act was introduced in the year 1872, and that effected an alteration of the law by striking out the definition of "Native passenger ship" that was contained in the Act of 1870, and it substituted a very much more sweeping definition, defining the expression to mean a vessel, whether sailing or steam, which carried more than thirty Native passengers. So that by the new definition of the Act of 1872, vessels of every class, sailers and steamers, whether they carried one passenger or a thousand, were swept into the rules which were framed for voyages from India to the Red Sea and the Persian Gulf. That created a hardship greater than before, because the rules which might be applicable to a voyage from Madras to Jeddah were by no means applicable to a voyage from Madras to Negapatam; and yet they were applied to all voyages. The result was that the law had not worked at all; in fact it was very generally disobeyed, and in most cases from the impossibility of obeying it, no notice had been taken of the disobedience.

When this Bill was introduced, it was on account of the representations made by the British India Steam Navigation Company to the effect that they could not observe the rules laid down by the law; and, in the first instance, the Bill observed the classification of vessels and voyages established by the existing law; but it was proposed to relieve the hardships that were felt by giving a greater power to the Executive to exempt vessels from the existing statutory rules, and to make the law more efficient by empowering the Executive to make special rules for different voyages. When the Committee came to work out this proposal, it was attended by a very intelligent gentleman named Kittredge, who carried on a passenger traffic business in Bombay; and he pointed out, in the first place, that there was a great deal of uncertainty introduced by leaving those matters to Executive rules, and in the second place, that the Local Governments, though they must always have a great deal to say to those rules, could not possibly deal with the matter efficiently; because, from the very nature of the subject, the voyages to which the rules would apply would be under the authority of no one Local Government, so that it was a matter with which only the Supreme Government could deal with quite adequately. At the same time, Mr. Kittredge suggested that voyages and ships might be classified in a different way so as to have an efficient law which yet would not work hardship.

The proposals now made were founded on Mr. Kittredge's suggestions. In the first place the Committee adhered to the rule that a ship, in order to come within the provisions of the Act at all, should carry more than thirty passengers. It was not worth while to carry supervision lower than that. That would alter the law as regarded the Bay of Bengal, where at present the provisions of the Act of 1859 applied to all vessels. Then, instead of making a distinction between coasting voyages as performed by steamers, and other voyages, it was proposed to divide all voyages into long and short voyages. The dividing line proposed by Mr. Kittredge was that the voyage should be a long voyage if the ship, under ordinary circumstances, would be more than four days out of port. Subsequent representations, however, had induced the Committee to extend that period to five days, and they now proposed that, if a ship, under ordinary circumstances, was likely to be more than five days out of port, that should be considered a long voyage, and all other voyages short ones. Then they had made two sets of provisions: one of a very simple character, which was to apply to short voyages, and the other more elaborate and more restrictive, which was to apply to long voyages. In point of fact, they were assured that the two classes of business were of a totally different kind; that the voyages

n which ships were more than five days out of port included all the ilgrimages, and all the emigration to Singapore, the Straits Settlements, and Burma; and that the coasting traffic proper would all fall within the efinition of short voyages.

Having defined in the abstract what was a long and what a short voyage, he task remained to apply the definition to particular voyages. That must e the work of the Executive Government from time to time, and it was roposed to give the Executive Government power to declare with respect ither to a steamer or a sailing vessel, whether a voyage should be a hort or a long voyage.

The Committee did not think it desirable to introduce so great an alter-tion of the principles which underlay the whole of the law without consult-ng the local authorities; and although they did not at the time make a eport to the Council, as they thought the matter too uncertain for that, hey had consulted the maritime Local Governments, and the answers received rom them and the naval authorities under them led the Committee to believe hat the classification proposed by Mr. Kittredge was a sound one and ould lead both to the simplification and the efficiency of the law.

There was one other point which it was proposed to alter. At present, so ar as regarded the rules for the measurement of space, and for proportioning he number of passengers to the size of the vessel, they rested upon the onnage of the vessel. The Committee were informed that this was not a easurement applicable to the vessels engaged in this business, and that it as not by the tonnage that we should calculate such measurements. They ad therefore provided that those measurements should be calculated entirely in uperficial and cubic feet.

Those were the more prominent alterations that the Select Committee had ade in the principles of the existing law and of the Bill as it was introduced. Of ourse, such alterations of principle had led to numerous alterations of detail; ut he need not trouble the Council now with any further explanation, ecause there was no motion before them to take the Report into consideration. t was proposed that the Bill should be republished, and that criticisms from he Local Governments and all persons concerned should be invited, before it was again brought before the Council.

The Hon'ble MR. HOBHOUSE also moved that the Bill as amended be published in the *Gazette of India* in English, and in the *Calcutta Gazette*, the

Fort St. George Gazette, the *Bombay Government Gazette*, and the *British Burma Gazette* in English and in such other languages as the respective Local Governments thought fit.

The Motion was put and agreed to.

CENTRAL PROVINCES LAWS BILL.

The Hon'ble MR. HOBHOUSE also presented the Report of the Select Committee on the Bill to declare and amend the law in force in the Central Provinces.

OBSOLETE ENACTMENTS REPEAL BILL.

The Hon'ble MR. HOBHOUSE also introduced the Bill for the repeal of certain obsolete enactments, and moved that it be referred to a Select Committee with instructions to report in two months. He had explained at the last meeting of the Council what the object of the Bill was. It was one of the measures that we had taken up with a view to get a convenient edition of the Statutes and Regulations which applied to India.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be published in English in the *Gazette of India*, and in the local Gazettes of the several Provinces.

The Motion was put and agreed to

BOMBAY REVENUE JURISDICTION BILL.

The Hon'ble MR. HOPE presented the further Report of the Select Committee on the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-revenue, the charge of which, he observed, had devolved on him in consequence of the departure for England of Sir B. H. Ellis. As the subject was an important one, and the *personnel* of the Council had changed considerably since the Bill had been introduced, he would briefly recapitulate its origin, and then explain in detail the grounds of the present recommendations of the Committee.

The Bill was first introduced by Sir B. H. Ellis in August 1873, and its scope was to place the so-called "Old Provinces" of the Bombay Presidency, where the Civil Courts are not excluded from taking cognizance of matters connected with land-revenue assessment, exemptions, &c., upon a level with the "New Provinces," where they are. By the "New Provinces" was meant Khandesh, the Deccan, and the Southern Mahratta Country, which were conquered from the Peishwa, together with certain other districts acquired by treaty,

exchange, lapse, &c. The "Old Provinces" comprised Gujarat, the Konkan, and Canara, and were only two-sevenths in area, and considerably less than half in population, of the whole Regulation Provinces of the Presidency. The reasons given for the proposed change were, that the Civil Courts had not the technical knowledge to deal with assessment; that they might in a particular, and perhaps ill-argued, case go counter to the entire policy of Government; that suits might so multiply as to be executively embarrassing and politically injurious; and that cases had actually arisen showing good grounds for this view. The exact extent to which jurisdiction should be barred was left for discussion.

In April 1874, the Committee's first Report was presented to the Council. It left the principle of the Bill unchanged, but recommended considerable alterations in its phraseology, chiefly in accordance with the North-Western Provinces Land-Revenue Act (XIX of 1873), and added provisions to secure sufficient rights of appeal to the Executive in lieu of the resort to the Courts, which was to be withdrawn.

After this Report, further discussion ensued with the Bombay Government as to the wording of the Bill, and the whole question had also to be reconsidered in connection with a proposal from them to consolidate the entire Land-revenue law of Bombay, which shortly took form by the introduction of a Bill into the local Legislature in January last. Then occurred the departure of Sir B. H. Ellis, followed soon afterwards by that of Messrs. Bayley and Dalyell, who were members of the Select Committee. Consequently, it was only recently that the subject could again be taken up.

The present members of the Committee, who were all new, with the exception of the Hon'ble Mr. Hobhouse, had examined the subject *ab initio*. They fully concurred as to both the necessity for legislation and the principle on which it was proposed to provide it, and had in their report merely recommended certain modifications in the scope of the Bill. In order to assist the Council in appreciating the position which they had taken, MR. HOPE would offer a short sketch of the history and present condition of legislation on the subject of land-revenue, as far as the Civil Courts were concerned.

The early Regulations of Bengal, Madras and Bombay left the acts of officers of the Government open to question in the Civil Courts to a considerable extent; but at the same time the language used was so vague, and in some cases even so contradictory, that it was difficult to determine what were

the exact limits intended by the legislators; and the fact that the Courts for a long series of years never practically interfered in technical questions connected with the revenue would seem to show that their powers were not in those days understood as having the extensive application which has of late been claimed for them.

In *Bombay*, the subjection of the Executive to the Civil Courts in revenue matters, whatever may have been its exact limits, which Mountstuart Elphinstone's revised Code of 1827 contained, was even at that date felt to be unsuitable to, if not dangerous for, the New Provinces; and the action of the Courts was therefore by that Code barred in those Provinces as regards the assessment and collection of the land-revenue, the administration of alienations from it of all kinds, and of grants and allowances not hereditary, village boundary disputes, and certain minor matters. This exclusion of the Courts continued in all essentials up to the present day, having been maintained by Acts XI of 1852 and II of 1863. The principle had also found further development through the whole Presidency in the Acts of the local Legislature: in Act II of 1866 (section 6), with reference to superior holders' rents, and in Act II of 1871, when it was applied to an assessed tax. As regards holdings for service, the law had since 1833, if not before, been that they were "resumable or continuable" at the pleasure of Government. In *Madras*, a definite and material restriction regarding ináms was placed on the Courts by Regulations in 1831 and subsequent years; while in matters of assessment they did not appear to have ever practically interfered up to 1864, when they were effectually excluded by the proviso in Madras Act II, that "no Court of Civil Judicature shall have authority to take into consideration or decide any question as to rate of land-revenue payable to Government," &c. In *Lower Bengal*, the fact of a permanent settlement, the paucity of ináms, and the absence of village-officers, had rendered the question of less moment; but a special procedure for ináms existed, and in practice the Civil Courts had not often interfered in the subjects now under discussion. In *the North-Western Provinces*, including the permanently settled districts, the Courts had now been effectively barred by Act XIX of 1873, which however was but little of an innovation except in those districts. In *the Panjáb*, Act XXXIII of 1871 only gave legal form to the exclusion which already existed; and in *Burma* and *Oudh* analogous exclusion was understood to prevail. As regards the land-revenue, it might thus be safely said in general terms that in no part of India, except perhaps in Bengal and the "Old Provinces" of Bombay, did the Courts possess a power of

going into the question of the principle and amount of assessment; and even in those "Old Provinces" the exercise was only of recent date. As regards the entire class of State grants and alienations which were now technically termed pensions, Act XXIII of 1871 had consolidated throughout the Empire the exclusion of the Courts which the local laws had already more or less completely provided. Finally, the principle was applied to an assessed tax by the series of Income Tax Acts from 1860 downwards.

Thus, the whole course of legislation during the last half century had been gradually to withdraw from the Civil Courts to a greater or less extent, matters affecting the public revenue, whether in its assessment, its collection, the adjudication of alienations from it, or the remuneration of public servants connected with its administration. It was remarkable, MR. HOPE continued, that the position at which we had thus arrived in practice corresponded pretty closely with what was well known, and clearly acknowledged by historical and political writers, to be in theory the position of the State, at least in India, namely, that of being the highest authority in matters of taxation, vested with the prerogative and the duty of imposing and equitably distributing the public burdens, of conferring exemption from them to such extent and for so long as to it appeared expedient, and of adopting such measures as might be required effectually to ensure its orders and grants being understood and acted upon. He used the term "the State" in its widest sense, including the Legislature partly composed of non-official members. This prerogative of taxation was conspicuously asserted in section 2, clause 2, of Bombay Regulation XVII of 1827, which provided that nothing "shall affect the right of Government to assess to the public revenue all lands, under whatever title they may be held, whenever and so long as the exigencies of the State may render such assessment necessary." Were there any doubt as to this being, in fact, the common law of India, it would be removed by a glance at the Native States around us, where all the powers which MR. HOPE had mentioned were exercised without question. In the course of his own political experience, MR. HOPE had come across numerous instances in which the British Government had acknowledged this prerogative in such States. The latest was that of the Gaikwár. In the proceedings connected with the first Commission it was never, he believed, questioned that the Chief had full power to regulate his assessments, or to resume any or all grants of money or land, whether made by himself or his predecessors; but it was merely held to be inconsistent with good government and the preservation of peace and order to exercise this power in a harsh, capricious, or vindictive manner.

Such being the fundamental principle, it would be inconsistent and improper for Government to abandon its functions in favour of the Civil Courts, or any other authority. The establishment of Courts of Justice independent of the Executive was a most important element in the good government of a country. But it was essential to their healthy action that they should not have assigned to them a province alien to their peculiar capabilities. The maxim *ne sutor ultra crepidam* was no less applicable to them than to others. In a country where the jurisdiction of such Courts did not rest on immemorial custom, but was of modern introduction, it was necessary to define by written law what subjects should or should not be referred to them: and of that matter the State must, by the nature of the case, be the final judge.

What matters should or should not be so referred was the essential point in the present Bill. Here it was obvious that much depended upon the grade of cultivation and the political circumstances of the province to be dealt with. Where wealth and education were widely diffused, and private rights were defined with nicety and generally understood, the people might be left to protect themselves in the Civil Courts to a greater extent than where their ignorance would make the privilege a farce, or their turbulence might convert it into a source of danger. Consequently, we found the line drawn at different points in the various provinces of India, from Bengal at one extreme to Burma at the other. Considering the high advancement of the Western Presidency, there could be no doubt that the line should be drawn as high as possible, that is, that to the Courts should be referred all matters which were not in themselves unsuited for their cognizance. What matters the Committee deemed suitable could not be better stated than in the words of their Report:

"We consider that the true distinction between the province which is more proper to a Civil Court and that which is more proper to Revenue officers is to be found, not in the nature of the privilege claimed, but in the nature of the evidence by which it is supported. If the evidence consist of formal State documents, such as a law expressly creating or confirming an exemption, or a sanad, grant, judgment, or other formal adjudication affecting a particular property, then there can hardly be any dispute except one of construction, which is best remitted to a Civil Court. But where the question turns upon the validity of an alleged informal guarantee, or on the genuineness or authenticity of documents, though they may be said to emanate from a Native Government, or on oral evidence, and still more, when technical and special knowledge, historical research, or an accurate understanding of the political effect of political events, more or less distant and obscure, are indispensable, then we consider that the decision should rest with Revenue officers, and ultimately with the Government. For the Government is likely to have better information supplied to it; may select peculiarly

skilled persons as its advisers; is not dependent on the facts and arguments which the parties may happen either to supply or to omit; is more accustomed to deal with affairs on a large scale and on a moral basis; and alone has a direct political responsibility for its actions, and is at liberty to guide itself thereby."

He would next proceed to show the application of this principle in the amended draft of the Bill, as also to touch briefly on certain other matters now provided for in the latter. He did not propose to go through every section of the measure, but only to notice a few leading features. One point to which he wished especially to refer was to be found in the first section. The previous Bill provided, in clause (*b*) of that section, that the Act should not be applied in any degree whatever to towns and cities, for which there was a special law, namely, Bombay Act IV of 1868. The Committee considered, however, that there was no valid reason for treating matters which were really of a technical nature, such as assessment, boundaries, &c., differently in towns from elsewhere. It was, perhaps, true that the State had, to a considerable extent, forgone its rights in towns and cities, but at the same time it had very large rights remaining, and these rights were infinitely more valuable and as intricate to determine as, if not more so, than any similar rights which it possessed in the country. On the other hand, it so happened that a great portion of the questions which, as a matter of fact, did arise in towns were connected with exemption from land-revenue, and therefore these questions would, under the proviso in section 4 of the amended Bill, actually remain under the cognizance of the Civil Courts. In consequence of this it might be said that even any allusion to Act IV of 1868 was now superfluous. Probably it was so; but the Committee thought it better to let the Bill stand as now drafted, for the purpose of giving the public a more complete assurance that there was no intention of withdrawing from the Courts matters relating to exemptions of this particular class. He might also add that cases which were actually cases as regards the right of property, as distinct from occupation, would not be affected by the Bill. In view of these explanations, he trusted that there would be no reasonable ground for discontent at the extent of the change which had been made.

Passing on to section 4, that section was the key to the whole Bill. Clause (*a*) was simply a re-enactment of the existing Bombay law, which, as he had already mentioned, was likewise distinctly affirmed, as regards offices, by the Pensions Act. Clause (*b*) no longer contained, as it did in the first draft of the Bill, words referring to the question of the validity of an engagement made with Government for the payment of revenue; because, under the principle

which the Committee had adopted, an engagement being a definite and specified affair, might very well be left to be interpreted by the Courts. As illustrations of the sort of engagements which he referred to, he might mention Abkárí, Ferry, or other contracts which were given on a large scale in the Bombay Presidency.

The next clause (*c*) was one which provided for the collection of the land-revenue, and was a necessary corollary of the principle that the State must have the power of imposing what revenue it thought proper. Of course, to allow the State to impose what revenue it thought proper, and then to permit the collection of that revenue to be disputed by the Courts, would be altogether inconsistent. At the same time the Committee had reserved, by the important provisos under section 5, namely (*a*) and (*c*), which should be read together with this clause, a power to the individual to dispute in a Civil Court whether the amount which had been demanded of him was really correct, and also to allege that he was not the person from whom the demand ought to be recovered. This provision was more favourable than the law of Northern India; where the money must be actually paid under protest to admit of a suit being filed. As regards the second sentence in clause (*c*), section 4, about setting aside sales in consideration of irregularities or mistakes, the Committee had allowed the previous phrascology to stand, because the Bombay law on the subject of sales, which, though perhaps, quite sufficient, in reality, for the protection of the interests of the subject, was not at present very clearly enunciated, would be amended in the new Code now before the local Legislature.

Next as to clause (*d*). This should be read in connection with clause (*b*), section 5. The reason of this exclusion obviously was that the Government could not be dragged into Civil Courts in matters in which they had no concern merely at the beck and call of private parties, or compelled to keep their records in any particular way which the Courts thought best. At the same time, there could be no doubt that it was fully contemplated by the Bill that any decrees of Court in private matters which were passed, would, in practice, be fully recognized by the officers of Government. Clause (*e*), which reserved the question of the distribution of land on the partition of estates, similarly proceeded on the principle that the Executive Revenue Officers were the only competent judges of what were the relative values of different parts of a field or an estate, and alone fit to decide on similar technical matters.

Clause (*f*), again, must be read in connection with the proviso which followed almost immediately after it, and which he need not dilate upon, as

it spoke for itself; but he might notice that the sentence under (*f*), with regard to setting aside any cess or rate authorized by Government, was consistent with the principle which he had already pointed out as being established in the case of the Income tax, and in Act II of 1871. With regard to the other sentence under the same head, respecting the occupation of waste or vacant land belonging to Government, he might point out that the words "belonging to Government" were put in to show that it was not intended by this to bar suits against Government where a man claimed a piece of land as his own private property, but merely to bar vexatious suits regarding land admittedly belonging to Government.

He had already, in the course of his remarks, said all that was necessary regarding section 5. Sections 6, 7, 8 and 9 were merely a re-enactment of the existing law now scattered in a variety of different places in the Bombay Regulations and Acts. This re-enactment had been thought desirable in order to put the whole of the provisions about the jurisdiction of the Courts in one place, and so to let people know fully and clearly the remedies which they possessed against any illegal action on the part of Government officers. As to sections 10, 11 and 12 which related to appeals, they owed their origin to a desire to secure a thorough appeal up to the Executive Government in all cases in which, owing to mistake or accident, the right might not be found in the present law, which right of appeal was the more necessary at present, because we were taking away the resort to the Courts which had hitherto existed. But at the same time the Committee had considered it only reasonable to preclude the individual from resorting to the Courts until he had exhausted all the rights of appeal which the law allowed. Then followed three more sections, 13, 14 and 15, which it had been thought advisable to provide with a view to obviating suits against Government being prolonged or inefficiently tried, and to ensure any case being promptly taken up, and if necessary referred to the High Court on the question of jurisdiction. He need scarcely enlarge on the political and executive inconveniences which ensued when a point was raised with Government, and after three years or more consumed in litigation, it was perhaps eventually ruled that the Government were right, or even that the Court should never have taken up the question at all.

The concluding section of the Act had perhaps already been sufficiently explained by Sir B. H. Ellis. A certain section of a Bombay Regulation was inadvertently repealed in September 1871, by the Land Improvement Act, and

it was now proposed to reinstate this section, giving powers for the recovery of advances made by Government for rebuilding villages which had been swept away by inundation, or houses destroyed by fire, purchasing bullocks or seed, and similar objects which could not come within the terms of the Land Improvement Act.

In conclusion, he had only to point out that, while the effect of the proposed changes would be to take away some of the powers hitherto enjoyed by the Courts in the Old Provinces of the Bombay Presidency, it would also, on the other hand, admit them to a very large jurisdiction in the New Provinces never hitherto exercised. Now, with regard to that, it was a remarkable fact, and worthy of notice, that in the whole of the petitions presented to Government in connection with this Bill, it was nowhere seriously attempted to urge or prove that the exclusion which actually existed in the New Provinces had been productive of any harm. Therefore, he thought, we might fairly argue that if the great exclusion which at present existed in the New Provinces had produced no harm, the very much more limited exclusion which it was now proposed to introduce in the other districts would not be productive of any harm either. It was said in one of the petitions that the Old Provinces had hitherto thriven under the shadow of the Courts. Well, with regard to that it might be remarked that the New Provinces had also thriven without the shadow of the Courts. However, as a matter of fact, the truth lay in this, that the Courts had scarcely ever interfered in revenue matters in the Old Provinces till of late years, and that probably whatever thriving was to be found in these Provinces which was not attributable to the ordinary progress of society was attributable to the conscientious liberality of the Revenue Officers themselves, who he knew, from his own experience, and otherwise, habitually decided, and had decided thousands of cases, in favour of the subject, which, if they had been referred to the Civil Courts, must, under the rigid rules by which the Courts were conducted, have been decided in favour of the Crown.

The proposed Bill thus appeared to be based upon principles which were just and liberal, and which had been approved, as Sir B. H. Ellis mentioned, by no less an authority than the late Chief Justice of Bengal, Sir Richard Couch, who was peculiarly well qualified to pass a judgment upon a Bombay question. It also had the approbation of other high legal authorities. He had, therefore, every confidence that the Bill would be approved by this Council, and that it would bring about a satisfactory termination of the difficulties which had led to its introduction.

The Hon'ble MR. HOPE then moved that the Bill and the further Report of the Select Committee be published in the *Gazette of India* in English and in the *Bombay Government Gazette* in English and such other languages as the Local Government might think fit.

The Hon'ble MR. HOBHOUSE said—"As this Bill bears upon the administration of justice, and as it has been my duty to pay attention to some of the questions it deals with, I should like to make a few remarks on the shape it has now assumed; the more so because, as Mr. Hope has observed, the casualtites affecting our Committee have been so severe that I am the only survivor of the party. I do not propose to speak of anything but the most general principles involved in the measure. There are many details of it, especially among those additions which have been made by way of consolidating the law, which require an intimate practical acquaintance with revenue work to understand properly. I can only dimly form an opinion on such matters, and certainly should not presume to speak of them in this Council.

"Now the Council are aware that there was a good deal of objection made in the Presidency of Bombay to this Bill in the shape in which it was introduced: and I have been re-perusing divers petitions and pamphlets which have reached our hands, and which though numerous are mostly of one type and have evidently proceeded from only two or three sources. Petitions, however, must be estimated not so much by their numbers as by their contents, especially when the subject they deal with is one that cannot be judged of upon a superficial view, but requires a good deal of study, training and special knowledge to understand.

"Of the contents of the petitions I wish to speak with all respect. I do not think that the petitioners are by any means wholly wrong. They have indeed weakened their position by exaggerations, and the greater part of their arguments is rested on the erroneous idea that the Bill as introduced was intended to withdraw Revenue officers and their proceedings wholly from the control of the Civil Courts. The case of the petitioners would have stood better if they had set themselves to study the Bill and had worked out the problem how far it would actually interfere with the jurisdiction they wish to preserve. In presenting the former Report of the Committee our late colleague Sir Barrow Ellis mentioned that one of the pamphlets published on this subject contained a list of twenty-five cases which Civil Courts had decided against Revenue officers. The implication of course was that all such cases would be withdrawn from the

Civil Courts by the Bill, and that much injustice would be left unredressed. On examination, however, he could only find that two cases out of the twenty-five would be withdrawn from the Civil Courts by the operation of the Bill. I also have examined the cases and bring out the same result. And I add that the two cases in question are such as should be kept in the hands of the Revenue authorities.

"At the same time, and all misapprehensions and exaggerations notwithstanding, I think that some fault was justly found with our Bill as we framed it at first. If it had been carried in that shape it would have excluded from the cognizance of Civil Courts some classes of cases which I myself think ought to fall within it. And I believe that as it has now been modified under prolonged discussions and under two operations of the Select Committee, it represents more accurately than at first the most advantageous dividing-line between those matters which should, and those which should not, be treated as ordinary matters of litigation.

"It is true that the measure is still very far from according with the views of the petitioners. They propose to keep the law of the old provinces of Bombay just as it is, and to assimilate the law of the new provinces to it. Now I will just show to the Council what sort of a law it is which we propose to change and others desire to keep unchanged.

"The law is contained in Regulation XVII. of 1827, and, as was customary with the laws of those days, it mixes up with matter proper for legislation a quantity of directions to Revenue officers which would now be kept off the enactments and left to executive orders. I will read the passages which are germane to the present purpose:—

"'II. *First.*—All land, whether applied to agricultural or other purposes, shall be liable to the payment of land revenue to Government, according to the established principles which govern the assessment of that description of land to which it belongs, except such as may be proved to be either wholly or partially exempt from the payment of land revenue, under any of the provisions contained in Chapters IX. and X. of this Regulation.

"'*Second.*—Provided, however, that nothing contained in the preceding clause, or in the enactments therein cited, shall be understood to affect the right of Government, to assess to the public revenue all lands, under whatever title they may be held, whenever and so long as the exigencies of the State may render such assessment necessary.

"'IV. *First.*—When there is no right on the part of the occupant in limitation of the right of Government to assess, the assessment shall be fixed at the discretion of the Collector, subject to the control of Government.

"'*Second.*—When there is a right on the part of the occupant in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved, the assessment shall not exceed such specific limit.

"'IX. *First.*—The Collector's decision upon any question arising out of the provisions of the preceding sections shall, in the first instance, be obeyed and acted upon as the rule.

"'*Second.* But if any person should deem himself aggrieved by any such decision, he may either present to the Collector a petition, addressed to Government, praying for redress, or may file an action against the Collector in the Civil Court, under the ordinary rules, or he may pursue both methods at the same time.'

"The effect of all this is that although the assessment is to be fixed at the discretion of the Collector, that discretion may be challenged before a Court of Law: and if the discretion of the presiding Judge happens to be something different, the decision of the Collector must be overset. There is not a single question which can arise in the course of a settlement, whether it relates to the fertility of soils, or the prices of produce, or any other matter if any there be even more impossible for a Court of law to investigate, which may not be taken out of the skilled hands that can deal with it and carried before a tribunal that knows nothing about it. The Civil Judge may even control the broadest principles that lie at the bottom of an assessment. He may disapprove of the portion of the assets which the Government think it right to take. He may think that the assessment ought to be governed by prevailing rates of rent instead of the productiveness of the soil and the rates of prices, or he may think the contrary. He may even decide that the exigencies of the State are not such as to warrant the imposition of such an assessment as the Collector has decided to impose. In all these cases the decision of the Revenue officer is expressly made disputable in a civil action. In short, the whole land-revenue system of the country is by this Regulation made subject to the control of the Civil Courts.

"Now we are told that this was the deliberate policy of a great statesman, Mountstuart Elphinstone; that it is the fundamental land-law of the country; and that to alter it will be to take away the feeling of security which the people have against the encroachments of an irresponsible executive. I say on the contrary that no system of revenue could possibly stand such a strain, and least of all such a system as that of the Indian land-revenue, where the amount taken from the cultivators from time to time is, and always has been, and necessarily must be, at the discretion of the Ruler, until a permanent settlement is made. That Mountstuart Elphinstone did not intend to abandon this discretion is

manifest from the passages that I have read. What precisely he did intend, how far he contemplated that matters connected with land-revenue should be contested by ordinary litigation, it is impossible to say, for the Regulation contradicts itself in more places than one. But one thing we may be pretty sure of, and that is that nobody would be more surprised than Mountstuart Elphinstone himself to find that, owing to unskilful processes in framing his law, the discretion of the Ruler might be exercised by the Civil Court, and further that, owing to administrative changes which he could not foresee, that Civil Court might consist of professional lawyers.

"When we set up an income tax we do not allow every individual to dispute his liability in a Court of law; we take care to keep the decision in the hands of special officers, namely, the Revenue officers of the Government. And yet the amount of income tax is not discretionary with the Ruler, but is fixed by law; the controversies about it turn on the amount or nature of a man's income, facts which may be proved by ordinary evidence and handled by ordinary legal methods just as well as any other disputes about matters of fact. But even in such a case as this it is felt that the Treasury would be imperilled and the public service seriously embarrassed if every difference between the collector and payer of taxes could be the subject of a regular lawsuit.

"On every ground then, both because it is a public necessity that the greatest source of Indian revenue, the land-revenue, should be collected without vexatious litigation, and because its amount turns on considerations which are familiar to Revenue officers and are almost incapable of treatment by the methods of Courts of law, it is desirable that such Courts should not interfere in the kinds of question to which I have been referring. In parts of the Presidency of Bombay they can so interfere. In the greater part of the Presidency they certainly cannot; throughout the greater part of India they certainly cannot; and I believe they cannot in any other part of India. In truth, in the district governed by the Regulation of 1827, the extent of jurisdiction given to the Civil Courts for a long time escaped observation: but we are told that there has of late years been an increasing tendency to dispute the decisions of Collectors in Courts of law. Recent discussions have now made people aware that they may litigate any question they please, and it is certain that unless we alter the law, both we and the Civil Courts have serious trouble before us.

"I will just give the Council an illustration of the mode in which circumstances draw one question after another into Courts of law when the jurisdic-

tion exists; and it is an illustration of the greater value because it also shows how the Judges themselves naturally feel—as I should feel if I were one of them—the uncongenial nature of the functions which our law forces on them.

"I hold in my hand the report of a case decided in the Bombay High Court, entitled *Govind Vinayák Gadre* v. *The Collector of Ratnágirí.* The point was this. A man had his assessment raised. He contended that for the current year he was not bound to pay the increased amount because he had not received a certain notice, and he filed a plaint to enforce his contention. The jurisdiction was disputed by the Collector. The Court's judgment on the objection was as follows:—

"'It has been strenuously argued before us that the plaintiff, if injured by the act of the Collector in ordering the levy of the new rates from him, should have appealed to the superior Revenue authorities and to Government before he had recourse to the Civil Courts, and that as he had not done this, his suit should not have been entertained. We are of opinion that it was competent to the plaintiff under section 9 of Regulation XVII of 1827, if aggrieved by the Collector's decision directing him to pay increased assessment, to file an action in the Civil Courts, whether he applied for redress to Government or not. It was not the act of the Survey Officer fixing the new rates of assessment, subject to the sanction of Government, of which the plaintiff complained, as the Joint Judge appears to have considered. It was the act of the Collector, in directing the levy of the new rates from the plaintiff during the fiscal year 1867-68, to which the plaintiff objected; and the law we have cited has expressly given him the remedy to which he has had recourse.'

"Now, what does that mean? It surely means that in the opinion of the Court the discretion of the Survey Officer in fixing the assessment was a sort of question which could not properly be argued before them, though the smaller and more definite question about the act of the Collector in giving or withholding notice was expressly submitted to them by the Regulation. The former point was not the one to be decided, but that was obviously the way in which it struck their minds, though what they said was extrajudicial.

"Well, but then comes the case that was described by Sir Barrow Ellis at this table; and there the very principles of assessment were brought into question. The plaintiff's contention there was that the Ruler was taking too large a portion of the assets. Did the Court then treat the question as one not arguable before them? Did they say that the case supposed in the former judgment as one which ought not to come before a Civil Court had now arisen and therefore they would not entertain it? They did not say so, and they could not say so. They entertained the case, as they were bound to do, and decided it on the evidence

before them. And inasmuch as the Collector had relied entirely on the lack of jurisdiction, as it had not occurred to him that he was bound to defend the principles of his assessment to the satisfaction of the Judges, he had given no evidence to show that those principles were right, and so the decision necessarily went against him.

"I learn from the papers laid before the Committee either that fault has been found with this decision, or at least that it is supposed that the present measure was dictated by the feeling that the Court had done wrong. All I can say is, that I find no fault with the decision. If I did, I should say that the remedy was by appeal, not by this measure. The learned Judges seem to have acted in strict accordance with the duty cast upon them by the law. What I say is, that the law is in fault; that it bears hardly on all concerned; that it is not right towards the public or towards our Revenue authorities that they should have to vindicate the principles of their assessments before Courts of law, nor right towards our Civil Judges to saddle them with such a jurisdiction.

"Now if I have carried the Council along with me, they will, I am sure, concur with the Committee in thinking that the most sweeping and by far the most important clause in this Bill should be maintained: I mean that which is headed 4 (*b*) and which excludes from the cognizance of Civil Courts objections—

> "'to the amount or incidence of any assessment of land-revenue or cess or rate authorized by Government, or
>
> "'to the mode of assessment, or to the principle on which such assessment is fixed.'

"The provision which comes next in importance is that which is headed 4 (*f*). It excludes from the cognizance of Civil Courts the following matters:—

> "'(*f*) claims against Government—
>
> "to hold land wholly or partially free from payment of land-revenue, or
>
> "to receive payments charged on or payable out of the land-revenue, or
>
> "to set aside any cess or rate authorized by Government.'

"It must be obvious enough that nothing requires to be more carefully watched than a claim of exemption out of a general system of contribution to the public necessities. It is a thing constantly lost sight of, though it is but a truism, that an exemption to one only means an additional burden to his neighbours. We have an analogous case in our own history. Tithes were imposed by common law for important national objects, the maintenance of churches,

clergy, and the poor. They were charged upon all land except land dedicated to the clergy themselves. And with regard to other lands our common law would not hear of such a thing as an exemption. Every acre of land in lay hands was forced to pay tithes, and claims of exemption were absolutely disallowed by common law. In India, our law has not been so strict, I suppose on the ground that the Rulers of the country have been in the habit of rewarding services by granting exemptions of this kind. But the public importance of tithes cannot compare with the importance of that which is the back-bone of the fiscal sytem of India. And inasmuch as it was in accordance with native principles to consider grants by the Ruler couched in indefinite terms or in terms importing a perpetuity, to be revocable at his will, the Ruler always held in his own hands the means of correcting the weakness or carelessness or improvidence of his predecessors or himself. We are much more tender about disturbing any existing state of things; but we have to be especially careful to see that the public at large are not made to suffer by the mere circumstance that particular lands have in fact been held as exempt, or have been assessed at the same rate, for long periods of time.

"Now enquiries into such cases as these require an accurate acquaintance with the history and customs of the country, and their decision is often justly affected by political and social considerations. A Court of law is simply dependent upon the facts which the parties happen to put in evidence before it, and it must draw the logical inference from those facts, whether for or against the individual claimant, without any reference to or responsibility for the political consequences of its decision. It would be a very difficult thing to get a complicated case of this kind properly presented to a Court of law, nor do I think that such a tribunal is so likely to come to a just and fair decision as an officer or commission skilled in the very subject-matter.

"A case has recently occurred which illustrates these remarks very strongly. The inhabitants of a considerable tract of country in Canara have claimed what is in effect a permanent settlement of the land-revenue. They cannot point to any Regulation or formal act of Government; but they rely on promises alleged to have been made by Sir Thomas Munro, on certain kowls or leases alleged to have been granted by British officers in charge of the district, and on the allegation that their assessments have in fact been unchanged for a great number of years. I am speaking of the case at great disadvantage, because I have not read the judgment of the Court. But I have read a memorandum upon the case by the officer charged with its conduct,

and I find that its decision involves an accurate enquiry into the history of the country and its administration from times anterior to Hyder Ali down to the present moment. Indeed on some points the investigation goes back upwards of five centuries; though here it rests upon materials which appear to have been in the hands of Sir Thomas Munro, but which now have disappeared. The Government have been exposed to nearly one thousand lawsuits instituted by different landholders, each claiming a reduction of his assessment on the grounds I have mentioned. Now we have no reason to complain of the treatment of the case, for the decision has gone in favour of the new and increased assessment. But I say that such a matter as this, even independently of its great magnitude and consequent political importance, is not a proper kind of case to bring before a Court of law. And it is only a foretaste of what will infallibly happen on a still larger scale if we leave our Courts of law to be the ultimate arbiters of all revenue questions.

"There are, indeed, grounds of exemption as to which, if a dispute arises, I would sooner see it settled by a Court of law than by the Revenue authorities. If there is a formal specific bargain between Ruler and subject, or in other words between the public and an individual; if that bargain has taken the form of an enactment or a written agreement or grant; if there has been a judgment recorded in favour of an individual against the public; such cases as those resemble claims regarding private property and turn on the same kind of evidence and reasons as ordinary lawsuits. Such cases we propose to leave to the decision of Courts of law, and we have made an important modification of the Bill for that purpose. But with regard to claims of exemption such as that which is made in Canara, I feel certain that the common weal will be best consulted by leaving them in the hands of the Revenue authorities.

"Now I have dwelt upon the most general and important features of the Bill, and in doing so have noticed some general arguments used against it. Before I conclude I wish to notice one more of these arguments, a very favourite one it seems, because I find it repeated frequently in the petitions. It is said that a man ought not to be judge in his own cause, and we are told in one of the petitions, a very well expressed one by the inhabitants of the Kallian Taluqa, that the Legislature has from time to time affirmed this fundamental principle of all law as regards the older districts of the Presidency. I have no doubt that both Legislative and Executive have affirmed the principle as regards the whole Presidency, and I hope the time will never arrive

when either will affirm the contrary principle; but it is a different question whether such a principle is applicable to the case before us.

"In one sense a Collector who has passed an original decision is interested in maintaining one side of the case. He has committed himself to the view that he thought right, and then, though his private interests are not concerned in the matter, he is no longer an impartial judge on the question whether his view is right or wrong. But how does that consideration apply to the Commissioner who sits in appeal from him, or to the Governor in Council, who sits in ultimate appeal over all? Indeed, how does it apply to the Collector himself in framing his original judgment? We have been told to-day, and I have often been told before, that the comfort of the local officers is so directly affected by the contentment or discontentment of those among whom their lives are spent, that they have a strong motive for indulgent dealings with them. In fact the Government and its officers are only the representatives of the public, and whatever interests the public at large have, they have. They are interested in seeing that nobody escapes his fair share of the public burdens, and they are also interested in so dealing that people shall be contented, and not think themselves unjustly treated. The latter of these interests is quite as strong as the former. I can remember two important cases in which controversies of this kind have come up to the Government of India; and in each of these cases the latter class of considerations was quite as strongly advocated as the former, and in each case it was the prevailing element in the decision. In the case of private litigants all their passions and all their pecuniary and private interests are bound up in one issue of the suit; they have no balance to incline them to the other side. That is the reason which underlies the maxim that a man shall not be judge in his own cause. But to put the case between the officers of Government and the payers of land-revenue as one in which the former have either their passions or their pecuniary interests concerned all on one side, is to apply an excellent maxim to a very bad use.

"If indeed the maxim were applicable to matters of public revenue, if to allow the Executive Government of a country to assess its revenue uncontrolled by Courts of law really be to make a man judge in his own cause, then the maxim certainly is not a fundamental principle of all law. I have instanced the case of income tax. I might instance others, and I have shown that in India the assessment of land-revenue has always been and must be discretionary with the Ruler so long as it remains variable. And so far from its being true that as regards matters of public revenue the Legislature has been

constantly affirming the maxim in question, I hold in my hand another petition in which it is made a subject of remark and complaint that exactly the opposite course has been taken by Government. I read from the petition of the Ahmedábád Association the following sentence:—

"'Your Excellency's petitioners would conclude their prayer with the remark that this Bill is a continuation of a series of legislative enactments which, beginning with the Huck Act of 1839, and including in its range the Inám Summary Settlement and other Acts, ended with the Pension Act of 1871, and which has had for its object the gradual abridgment of the power of the Civil Court in matters of revenue and the extension *pro tanto* of the powers of the executive officers.'

"The list given is not quite correct, for some of the enactments referred have nothing to do with the point; but doubtless the extreme and manifold public inconveniences flowing from the unskilful frame of the Regulation I have been explaining to the Council have cropped up from time to time, and have been met by various enactments of which I hope this will be the last.

"I will only advert to one other topic. The objectors to the Bill say that the time has come for extending to the new provinces of Bombay the benefits of the law that applies to the old ones. At present there is a sharp territorial division, the old provinces being subject to the unbounded jurisdiction of the Civil Courts the effect of which I have been describing, while in the remaining parts the jurisdiction of the Civil Courts in revenue matters is totally excluded in the terms used by the Bill as it was introduced. We have now modified the Bill so as to preserve the jurisdiction of Civil Courts over a larger legal area; we propose to give the same law to the whole Presidency, and that will extend the jurisdiction of the Civil Courts into the new provinces where now they have none. So far the views of the petitioners are met by the alterations made in the Bill: but then the new jurisdiction given will be of reasonable instead of unreasonable extent.

"I think that the foregoing remarks will have made it clear that the present wide and vague jurisdiction of the Civil Courts must be in some way curtailed, and that the only question is where to draw the line. The Committee have set themselves to consider solely what matters it is most for the public interest to keep in the hands of Revenue authorities, and what to leave to ordinary litigation. When that dividing-line is drawn to the satisfaction of the Legislature, there appears to be no reason now existing why it should not apply to the whole Presidency."

His Excellency THE COMMANDER-IN-CHIEF said that a few remarks suggested themselves with regard to the Bill. Of course from his long residence in India he must be fully sensible of the absolute necessity for the unfettered power of the Executive in all matters relating to revenue. He should like information as to the particular points which were to be transferred to the jurisdiction of the Civil Courts in the new provinces. It seemed to him that the extension of the jurisdiction of the Civil Courts in revenue matters might entail upon all those concerned in litigation the transfer of their business to great distances. Perhaps Mr. Hope would describe some of the cases that would be transferred to the Civil Courts in the new provinces.

The Hon'ble MR. HOBHOUSE remarked that in page 3 of the draft Bill a proviso would be seen under heads (*h*), (*i*), (*j*) and (*k*), followed by some illustrations of cases, which would not fall within the Civil Courts.

The Hon'ble SIR WILLIAM MUIR said that, as he understood him, His Excellency the Commander-in-Chief wished to know how far the proposed Bill effected a change in the present law, and to what extent suits, which were now triable in the Revenue Courts, would be transferred to the Civil Courts.

His Excellency THE COMMANDER-IN-CHIEF observed that the question naturally arose from the remarks of Mr. Hope to the effect that the new provinces had gone on and prospered extremely well without the shadow of the Courts.

His Excellency THE PRESIDENT said:—"I think that the question asked by His Excellency the Commander-in-Chief is answered by a reference to the proviso attached to section 4 of the Bill. It may be found advisable after the Bill has been published, and when we come to discuss it again, to take into consideration the objections which His Excellency has raised.

"With regard to the general scope and object of the measure, I wish to say that it has been for a considerable time under the anxious consideration of the Executive Government. It is a subject not without difficulties, and upon which the Government of India have had a lengthened correspondence with the Government of Bombay.

"The Government of India believe that the main provisions now contained in the Bill are just, and, moreover, that they are necessary for the

purpose of avoiding the doubts and difficulties which the present state of the law involves in regard to the assessment and collection of the land-revenue in the Presidency of Bombay.

"Mr. Hope's review of the history of the relation of the Civil Courts to questions connected with the land-revenue in different parts of India was very interesting, and he has also expressed his opinions upon the relative functions of judicial tribunals and of the Executive Government in these and similar cases.

"I do not desire to enter now upon the discussion of so large a question as that, but I wish to express my entire concurrence in the statement which has been made by Mr. Hobhouse of the present condition of the law, as we understand it, in the Bombay Presidency, and of the reasons which have influenced the Government of India in deciding to recommend the limitation of the powers of the Civil Courts contained in this Bill to the consideration of the Legislative Council.

"The Motion which I have to put to the Council is that the Bill, together with the Report of the Select Committee, shall be published in the *Gazette of India* in English, and in the Bombay Presidency in English and in such other languages as the Local Government thinks fit.

"It is possible that when the Bill has been thus published points may arise which we have not yet taken into consideration. I am satisfied that, as has hitherto been the case, the Council will give every consideration to any suggestions that may be made by persons conversant with the somewhat complicated matters of detail treated in the Bill, and that, if necessary, such modifications will be made in its provisions as, upon consideration, may be found to be expedient.

"Mr. Hobhouse has shown in his speech to-day that the Government have not neglected to consider the objections which were raised to the Bill in its first shape, and that considerable modifications have been made in consequence; but, at the same time, it appears to me that the main principle of the Bill cannot be abandoned, and that it is necessary that it should be passed into law without any essential alteration."

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill for the repeal of certain obsolete enactments—The Hon'ble Sir A. J. Arbuthnot, the Hon'ble Messrs. Dalyell and Hope and the Mover.

The Council then adjourned *sine die*.

SIMLA;
The 13th October 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Govt. Central Branch Press, Simla,—L. D.—23-10-75.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 23rd November 1875.

PRESENT:

Major-General the Hon'ble Sir H. W. Norman, K. C. B., *Senior Member of the Council, presiding.*

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

The Hon'ble J. R. Bullen Smith.

The Hon'ble Sir Douglas Forsyth, C. B., K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

The Hon'ble T. C. Hope.

The Hon'ble D. Cowie.

The Hon'ble Rájá Narendra Krishna, Bahádur.

NEW MEMBERS.

The Hon'ble D. COWIE and the Hon'ble RÁJÁ NARENDRA KRISHNA, BAHÁDUR, took their seat as Additional Members.

CENTRAL PROVINCES LAWS BILL.

The Hon'ble SIR DOUGLAS FORSYTH moved that the Report of the Select Committee on the Bill to declare and amend the law in force in the Central Provinces be taken into consideration. He said that this Bill, as now presented, was in substance the same as the Bill which was first presented to the Council. There had been no changes made excepting one or two verbal alterations. The Bill had been sent to the Chief Commissioner of the Central Provinces, who was of opinion that the Bill as put before the Committee exactly met the requirements of the province.

The Motion was put and agreed to.

The Hon'ble SIR DOUGLAS FORSYTH also moved that the Bill as amended be passed.

The Motion was put and agreed to.

SPECIFIC RELIEF BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill to define and amend the law relating to certain kinds of Relief. He said that the first thing he must do was to apologise to the Council for the want of explicitness in the wording of the motion. He understood that some of his hon'ble colleagues thought he was going to propose a Poor-law, and others that it had reference to the movement of troops. But that was not the case. This Bill had nothing to do with the relief of taluqdárs or other distressed members of the community, nor with the change of sentries, but was intended to deal with that which was well known to lawyers under the technical term of "relief," namely, the remedy which was granted by Courts of justice to suitors. The subject was of considerable complexity and intricacy of detail. But he should be able, he thought, in no great number of sentences, to explain to the Council what was the general nature of it, and the reason why they should pass a law on the subject.

The Council would recollect that there was now pending before them a Bill for the purpose of reforming the Code of Civil Procedure, and it was in connection with that Bill that MR. HOBHOUSE asked leave to introduce the Bill he was now speaking about. The forms of decrees made by civil Courts of justice would be readily enough recognised as closely connected with the procedure of those Courts, though so far forth as those forms regulated the remedies which a suitor might obtain against his adversary, the subject was connected more with substantive law than procedure. Still, in framing the Code of Civil Procedure, we were constantly coming into contact with the kind of decree which had to be pronounced; indeed, there were some processes, such for instance as interlocutory injunctions, of which it was difficult to say whether they partook most of the nature of procedure or substantive law. Now the framers of the Code of Civil Procedure had confined themselves almost entirely to that which was procedure proper, or to that debatable ground to which he had been referring. But in two instances they had clearly overstepped the boundary, and had passed over into substantive law. These two instances were in section 15 of the Code, which dealt with declaratory decrees, and in section 192, the subject of which was the specific performance of contracts. In the Bill pending before the Council, it was proposed to repeal the whole existing Code excepting those two sections; and those were not dealt with by the Bill because it was intended to confine it to that which was properly procedure, and to keep our hands off substantive law. But it had always been intended, and he thought he had mentioned it before, to supersede the two sections in question by a fresh measure which would deal with the subject of them in a much more full and comprehensive manner.

Now, the remedies which were administered by civil Courts of justice might be divided into two great classes, those by which the suitor obtained the very thing to which he was entitled, and those by which he obtained, not that very thing, but compensation for the loss of it. The first branch was known as specific relief, and the second was known as, or at all events might be termed, compensatory relief. If A agreed to sell a house to his neighbour and then refused to perform his agreement, his neighbour might seek relief, either by compelling A to sell the house, or by making him pay damages for not selling the house; and so if A published a piratical copy of his neighbour's writings and invaded his copyright, his neighbour might seek either specific relief by restraining A from so doing, or compensatory relief by making A pay damages for the wrong inflicted by him. It was obvious that the first kind of relief did more exact and complete justice whenever it was applicable. But in the complicated transactions of life that kind of relief was often not applicable, and then more inconvenience and hardship were caused by attempts to carry the contract into effect according to its specific terms, than by the simpler and rougher method of giving compensation for the breach of it. The consequence was that there were very different considerations which regulated the exercise of jurisdiction by way of specific relief, whether in the performance of a contract or in the prevention of wrong, and the exercise of jurisdiction by the simpler and rougher method of giving relief by compensation.

In England that difference had been accentuated in a remarkable manner owing to historical causes. At a very early period in our history the Courts of Common Law refused to accommodate themselves to the growing wants of society, and declined to recognise a great number of transactions which sprung up more and more as society became richer and more civilized. The consequence was that large tracts of natural justice, so to speak, were left vacant and unprovided for, and they were occupied by the Chancellors who assumed the jurisdiction of compelling parties to do justice when the Courts of law refused to do so. Amongst other things, the Courts of law refused to give any remedy by way of specific performance or by way of prevention. If A contracted to sell a field, he could not be compelled by Common Law to do so, but he might be ordered to pay damages for not doing so; or if he encroached upon his neighbour's property, he could not be compelled by Common Law to abstain from doing so, though he might be ordered to pay damages for the wrong actually done. In fact, in all such cases, Courts of Common Law adhered to the rougher and simpler jurisdiction of compensatory relief. The result was that two important and extensive heads of Equity jurisdiction, in other words, the jurisdiction of the

Court of Chancery, became established; namely, the remedy by way of specific performance of contracts, and the remedy by way of injunction for preventing people from doing wrong.

In India we possessed the great advantage of having a single Court for the purpose of administering every kind of justice, by which we were enabled to get rid of many refinements and subtleties which beset this kind of jurisdiction as administered by the Court of Chancery. But still the inherent difference between the two great classes of relief remained, and there remained the fact that the former of these, namely, specific relief, though more exact, was more delicate and more difficult to administer, and that it required more skill and care on the part of the Judge, and that some guidance of the legislature would therefore be acceptable to him.

The Bill he asked leave to introduce did not deal with compensatory relief at all except incidentally and so far as it was either supplementary or alternative to specific relief. Its direct object would be specific relief, and mainly the two subjects he had mentioned, the remedy by way of specific performance, which rested entirely upon contract between the parties, and the remedy by way of injunction, which might rest upon contract or upon the right to have property protected from invasion.

It would be an additional inducement to the Council to accept legislation upon this subject when he reminded them that it formed part of the comprehensive plan which had been so ably laid down by his predecessor Mr. Stephen. He mentioned the matter in one of his latest speeches in Council on the passing of the Contract Act. They had not accomplished any large portion of that plan, because their hands had been quite full of business with reference to matters which were more pressing under the circumstances, or which appeared to them to be more pressing. But they had never lost sight of it, and the Bill for the amendment of the Civil Procedure was an attempt to accomplish one substantial portion of it, and the Bill he now asked leave to introduce was an attempt to accomplish another.

The Motion was put and agreed to.

The Council then adjourned to Tuesday, the 7th December 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 23rd November 1875.

Office Supd. Govt. Printing.—No. 133 L D.—26-11-75.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Tuesday, the 7th December 1875.

PRESENT:

Major-General the Hon'ble Sir H. W. Norman, K. C. B., *Senior Member of the Council, presiding.*

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble J. R. Bullen Smith.

The Hon'ble John Inglis, C. S. I.

The Hon'ble Sir Douglas Forsyth, C. B., K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

The Hon'ble T. C. Hope.

The Hon'ble D. Cowie.

The Hon'ble Rájá Narendra Krishna, Bahádur.

SPECIFIC RELIEF BILL.

The Hon'ble MR. HOBHOUSE introduced the Bill to define and amend the law relating to certain kinds of Specific Relief, and moved that it be referred to a Select Committee with instructions to report in three months.

When he asked for leave to introduce the Bill, he had explained its general objects, and he now had to show the mode in which the Bill carried those objects into effect. The Council knew that the Bill was designed to occupy a middle place between the Civil Procedure Code on the one hand, and the Indian Contract Act on the other hand. All rules relating to the validity or invalidity of contracts, and the legal relations of parties to contracts, were dealt with by the Contract Act; and the technical processes by which parties were to obtain their remedies were provided for in the Civil Procedure Code. What it was proposed to do in the Bill before the Council was to point out the nature of the remedy to be obtained. Therefore, this Bill was not intended to cover any

part of the ground which was already covered by the Contract Act, any more than it covered the ground already covered by the Civil Procedure Code; and if it did trespass on either ground it was by mistake, which ought to be corrected when the Bill was before the Select Committee.

Now MR. HOBHOUSE had mentioned on the last occasion, that the main subjects of the Bill were the remedies by way of specific performance of contracts, and by way of injunction for the prevention of wrong. Any one who looked at the Bill would see that the bulk of it was taken up with these two subjects. There were, however, one or two other subjects of considerably narrower range, with which the Bill attempted to deal, and to which he would first call attention very briefly.

Chapter III dealt with the subject of the rectification of instruments. That, no doubt, was in itself a kind of specific performance, because if there was no contract between parties, there would be nothing to rectify. But it was specific performance of a very peculiar nature, because it involved the alteration of that which the parties to the contract had already settled in a formal way. Therefore it was a subject which needed more strict rules than the other kinds of specific performance.

Chapter IV dealt with the rescission of contracts, a proceeding exactly the opposite of the specific performance of contracts.

Chapter V dealt with the cancellation of instruments, occasions for which arose when one of the parties had got possession of a document, on which he might not indeed be able to found a legal claim in a Court of justice, but which might give him such *primâ facie* right against the other as would expose him to vexatious claims and litigation. In these cases it was just that the aggrieved party should apply to a Court of justice in order to have the instrument destroyed.

Chapter VI dealt with the subject of declaratory decrees, and that was a matter of jurisdiction of some delicacy, as to which some direction should be given. MR. HOBHOUSE had previously mentioned that the subject was dealt with in the Civil Procedure Code. That Code embodied the English law on the subject, and merely said that a decree should not be invalid, on the ground only that it was a declaratory decree, but it did not show in what cases a declaratory decree should be made.

Chapter VII dealt with matters which seldom arose, but when they did arise, they were usually of great importance. These were now the subject of

the writ of *mandamus*. It was called a chapter for the enforcement of public duties; and the rules here laid down were intended to take the place of the procedure for a *mandamus*, to supply a procedure more simple than the rather intricate and technical procedure which was now in force.

In all of the various matters embraced by the Bill, it was intended almost entirely to follow the present rules of English law; and by English law, he meant that portion of English law which had been imported into India, and which he might also call Indian law. There were some material variances between the law as administered here, and as administered in England, a discrepancy mainly owing to the different conditions which existed in India. The principal one of these differences MR. HOBHOUSE had already mentioned to the Council, namely, that we had not the double jurisdiction which existed in England. We had not to commit our law to a judicial system worked upon the principle of having one set of Courts to do injustice in order that another set might interfere to do justice by way of injunction or in some other way. Owing to that circumstance the process of choosing and seeking a remedy was very much more simple in this country than in England. If a contract was not performed, a plaintiff in India might apply to one tribunal and ask for the whole of the remedies to which he was entitled, instead of being obliged to go backwards and forwards to the two sides of Westminster Hall, perhaps after all obtaining no justice in either.

If the Council would examine section 18, they would see that the Bill contemplated an entire settlement of all disputes arising from the non-performance of a contract.

It ran as follows:—

"Any person suing for the specific performance of an agreement, may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a valid agreement between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the agreement should also be made to the plaintiff, it shall award him such compensation accordingly."

So again, in section 28 it was provided that the dismissal of a suit for specific performance of an agreement should bar the plaintiff's right to sue for

the breach of such agreement. In England that was not so—or rather, MR. HOBHOUSE was speaking of what was the law in England until a few days ago; for it was possible that the alterations which had just come into effect would make a great difference in the state of the law and bring it nearer to what was expressed in this Bill. But certainly before these alterations were made a man might sue in the Court of Chancery for the specific performance of a contract; after the whole case was gone through, it might be discovered that the appropriate remedy was not specific performance, and the case might accordingly be brought before a Court of law, where the whole subject of dispute would have to be tried over again. Here we had the advantage of a single tribunal, and as was clearly right, the plaintiff might come to it and ask for the whole of the remedies to which he was entitled. He must make up his mind to what remedy he is entitled, whether to specific performance, or to compensation, or to both. And as he could get in one suit all he was entitled to, it was but just that the whole dispute should be concluded in one suit, and that no second suit should be brought.

Another ground of difference was this, that in India the very artificial law known as the Statute of Frauds no longer affected contracts. It had been said by a very great authority that every line of the Statute of Frauds was worth a subsidy. It might however be affirmed with equal truth that every line had cost a subsidy, for there was probably no Statute on the books which had given rise to so much litigation as the Statute of Frauds. The reason was this, that it had introduced an artificial system, and enjoined strict formalities in transactions of every day occurrence between simple people, who were accustomed to use no formalities in them. People went on in their old natural informal way, and then, when a dispute arose, one party would prevent the other from getting justice by insisting on the want of the requisite formality. The Courts, as usually happens in such cases, refined on the Statute to prevent glaring injustice, and thus the points of dispute were largely multiplied. There was no part of the subject of specific performance of contracts which was more subtle or refined than those parts in which the provisions of the Statute of Frauds came under the handling of the Court of Chancery. But the Statute had been repealed in India by the Contract Act, and with it we got rid of a large and troublesome portion of the subject of the measure before the Council.

There was another subject of considerable practical difficulty on which it was almost impossible to lay down rules. That subject was the delay occurring before the institution of a suit. There was no express law limiting the time within which a suit for specific performance should be instituted in the

Court of Chancery. But the Court of Chancery laid down the rule that suitors should come quickly to obtain such a remedy, and it was frequently a very difficult question to decide whether a plaintiff had or had not come into Court in time. Here in India, the Limitation Act provided a period of three years in which a suit for the specific performance of a contract should be brought, and as it was not proposed to alter the law upon this point, we were able to avoid treating the difficult question what was or was not delay.

The foregoing were the points on which the conditions of Indian law brought about a variance between the provisions of this Bill, and what would be necessary if a similar Bill were introduced in England. Besides that there were in this branch of law as in others, matters on which authorities differed. Some of these the Bill attempted to settle one way or the other, and in that sense it might be said that it altered the law, by ascertaining what was doubtful, or ruling one way what might possibly be ruled another way in a Court of law. He had followed what he conceived to be the balance of authority, or what appeared to be the clearer and more intelligible rulings in each matter. He would mention the principal of these points.

There was one point of considerable difficulty in the Bill, and that related to the part which made provision for the specific performance of contracts so far as they could be performed, and for compensation so far as it was not possible to perform them. This jurisdiction was a very delicate one, for it amounted to something like making a new contract between the parties, when the person seeking performance was the person in default. Yet it often happened that there was some quite insignificant part of the contract which the party seeking performance was bound to perform but could not. In such a case it was wrong that, because some little thing remained undone, the whole contract should fail.

Among the rules to choose from, the Bill had followed that which was the most restrictive of the jurisdiction. It was expressed in section 14, which ran as follows :—

"Where a party to an agreement is unable to perform the whole of the agreement, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the agreement as can be performed, and award compensation in money for the deficiency."

Then section 15 exhibited the different positions held by the party in default and his opponent, when the default is of greater magnitude. It ran as follows :—

"Where a party to an agreement is unable to perform the whole of the agreement and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, the party in default is not entitled to obtain a decree for specific performance, but the Court may, at the suit of the other party, direct the party in default to perform specifically so much of the agreement as he can perform, provided that the party seeking specific performance relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the other party."

For both these sections the Bill gave some illustrations to show the more clearly what was meant. MR. HOBHOUSE believed that they were framed in accordance with the most careful decisions. At all events, there was no intention on his part to alter any recognized rule of law.

Another subject of difficulty was connected with the performance of agreements consisting of a number of minute acts, the doing of which the Court could not attend to, as it might attend to the doing of a single act, such as the execution of a lease, giving possession of a house, and so forth. He meant, for example, such a contract as one to repair a house or to cultivate land in a given way. The Bill dealt with such cases in section 20, which set forth certain agreements that could not be specifically enforced. Sub-section (*c*) included among these—

"an agreement which runs into such minute or numerous details, or which from its nature is such, that the Court cannot enforce specific performance of all its material terms."

Then there were some illustrations given of this class of contract. He believed that the sub-section (*c*) and the illustrations represented with fidelity the law administered in England and in India too. If it did not, it was from the difficulty of specifying in concise terms a rule drawn from many decisions.

Another point occurred in the same section, where sub-section (*g*) included among the agreements not capable of specific performance,

"an agreement the performance of which involves the performance of a continuous duty extending over a longer period than five years from its date."

There the Bill endeavoured to fix a term which by the present law was not fixed. The Courts now would not decree the performance of a contract involving

the performance of a continuous duty for a number of years; but the number was indefinite. Whether it was wise to define it, MR. HOBHOUSE had his doubts; and if it was, the length of the term might be a subject of doubt. It was a question which might well be settled in Select Committee. The proposal was put on the face of the Bill in order that it might receive comment, a course often pursued with advantage.

MR. HOBHOUSE was much obliged to the learned Secretary, Mr. Stokes, for reminding him of that which for the moment he had forgotten, namely, that this term of five years was inserted in the draft of the Civil Procedure Code which was settled and published in the year 1865. It was so settled by Sir Henry Maine and Sir Henry Harington, so that it had the authority of two eminent men, one a great jurist, the other the first authority of his day on the subject of Indian procedure.

The foregoing were the only points which occurred to MR. HOBHOUSE to mention on which the Bill attempted to ascertain doubtful or indefinite law. Distinct and conscious alterations of the law he had made none, except one that he would mention immediately.

In section 23, sub-section (*c*), it was provided that a contract for the sale of property should not be enforced by any one who had made a previous voluntary settlement of the same property. And in section 24, sub-section (*d*), a corresponding provision was made with respect to a purchaser who had notice of such a voluntary settlement. By a 'voluntary settlement' the Council must understand a settlement for which no money was paid, or for which no other valuable consideration, such as marriage, was given; as when a man from affection or prudence settled property on his wife or his children. Well, most people would ask what necessity there was of passing a law to this effect; for that, if a man had settled his property, he had parted with it, and how could he sell it? It resulted, however, from some very remarkable decisions on a Statute of Queen Elizabeth's reign passed for the prevention of frauds upon purchasers, that if a man made a voluntary settlement of his property, he might subsequently sell that very property for money, and the purchaser might take it away from the true owners, or, as they were called, the volunteers. He thought most people would say that a Statute of that kind, instead of being one for the prevention of fraud, was one for the commission of injustice; and so it frequently operated. Courts of Equity, however, would not allow the settlor himself to enforce specific performance of his contract in a case where his hands were so very far from clean. But inasmuch as his sale

of the property vacated the prior settlement as against the purchaser, the purchaser was allowed to maintain a suit for enforcing the sale, even though he had notice of the settlement before paying his money. The Bill, however, proposed that in such a case the purchaser should not be entitled to specific performance. He might take whatever other remedy he could get on his contract, but he should not take away the property which he knew that the vendor had no moral right to sell to him. On that point the law was altered, and MR. HOBHOUSE thought that the alteration would commend itself to all unsophisticated minds.

There was another point on which the Bill adopted a provision taken from the New York Code which MR. HOBHOUSE did not remember to have observed in any judgment or text-book. Section 12, sub-section (*a*), provided that an agreement might be specifically enforced

> "when it has been expressly agreed in writing between the parties to the agreement that specific performance thereof may be required by either party, or that compensation in money shall not be considered adequate relief for its non-performance."

MR. HOBHOUSE had never seen a contract of this kind, but was told that it was one not unlikely to be made in India. No doubt such a provision would have its effect on the discretion of the Court without any specific rule of law on the subject. He hardly knew whether it was an addition to the existing law, but he mentioned it as being something not yet expressed in English or Indian law.

He had now shown how far the Bill was intended to be a mere expression of existing rules, and how far he had consciously altered those rules, or ascertained them when indefinite. As for codifying law without unconsciously producing some alterations, it was a matter of extreme difficulty, if not an impossibility. By codifying law, he meant the reduction to writing of that which was before unwritten. And partly because the lawmakers might err in their conception of what they ought to set down as law, partly because, having a right conception, they might use inappropriate language to express it, partly because their expressions were construed by other minds who might give to them quite a different turn from what they were intended to take, it would be a very wonderful thing if after codification the law remained precisely the same as before. That consideration, however, applied to all attempts at codification; all he could do now was to mention the variations of which he was conscious, and he had done his best to explain to the Council the relations which the Bill bore to existing laws.

Only one other point he had to mention in connection with the chapter on injunctions. The Council would see that the Bill did not meddle with interlocutory injunctions at all, by which term he meant those processes of the Court which were simply intended to preserve the *status quo* pending the decision of the dispute. They were treated as of the nature of procedure, and were dealt with by the Civil Procedure Code. In giving rules about perpetual injunctions it was laid down that the Court should be able to grant mandatory injunctions. The term "injunction" was rather deceptive, for it looked as if designed to enjoin the performance of something, whereas its technical meaning was the prevention of something, and the Courts used to hold that they could not by injunction command an act to be done. That, however, was found inconvenient, and indirectly they assumed the power of commanding a positive act under a negative form; for instance, a man might be restrained from keeping up a wall, thereby being in effect compelled to pull it down. All those circuitous modes of action had their points of weakness, and this Bill went more directly to the required object. In section 52 it was provided that by injunction the Court might not only prevent the breach of an obligation, but compel performance of the requisite acts.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be published in English in the *Gazette of India*, and in the respective Gazettes of the Local Governments in English and such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

PRESIDENCY BANKS BILL.

The Hon'ble SIR W. MUIR moved for leave to introduce a Bill for constituting and regulating the Banks of Bengal, Madras and Bombay. Hon'ble members were doubtless aware that it had been resolved to alter the relations which existed between the Government and the Banks at the presidencies, and to sever the connection between them and the Government. It was accordingly necessary to introduce a new law for the purpose, and that was what SIR W. MUIR proposed to do if the Council gave him leave, and he would, on the Bill being introduced, explain the subject in detail.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to define and amend the law relating to certain kinds of Specific Relief.—The Hon'ble Messrs. Bullen Smith and Inglis, the Hon'ble Sir Douglas Forsyth, the Hon'ble Messrs. Eden and Hope, the Hon'ble Rájá Narendra Krishna and the mover.

The Council then adjourned to Tuesday, the 14th December 1875.

WHITLEY STOKES,

CALCUTTA;
The 7th December 1875.

Secretary to the Government of India,
Legislative Department.

Office Supd. Govt. Printing.—No. 161 L D.—15-12-75.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 *Vic., cap.* 67.

The Council met at Government House on Tuesday, the 14th December 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *Presiding.*

His Honour the Lieutenant-Governor of Bengal.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble J. R. Bullen Smith.

The Hon'ble John Inglis, C. S. I.

The Hon'ble Sir Douglas Forsyth, K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

The Hon'ble T. C. Hope.

His Highness Mahárájá Iswaríparshád Náráyan Singh Bahádur, of Benares.

The Hon'ble D. Cowie.

The Hon'ble Rájá Narendra Krishna Bahádur.

NEW MEMBER.

His Highness MAHÁRÁJÁ ISWARÍPARSHÁD NÁRÁYAN SINGH BAHÁDUR took his seat as an Additional Member.

PRESIDENCY BANKS BILL.

The Hon'ble SIR W. MUIR introduced the Bill for constituting and regulating the Banks of Bengal, Madras and Bombay, and moved that it be referred to a Select Committee with instructions to report in two months. He said—

"Your Excellency; when I obtained permission of the Council to introduce the Bill for constituting and regulating the three Presidency Banks, I stated the occasion of the measure to be that Government had resolved on retiring from its position as a shareholder in the existing Banks, a change which rendered necessary a new Act of incorporation.

"I will trouble the Council now with but a very brief narrative of the circumstances which have led to the present measure. The Bank of Bengal took its origin as the immediate result of an able letter addressed in 1801 to the Government of India by its Accountant General, Mr. Henry St. G. Tucker, in which he showed that a Bank was necessary both in the interests of Government and of the mercantile community. Money was in those days raised by what were called 'Treasury bills.' But although these bore interest, they were liable to depreciation in the market, and by the combination chiefly of Native brokers, were often at a heavy discount. To remove the inconveniences of this arrangement and maintain the credit of Government, Mr. Tucker argued that a bank was indispensable; and that in order to its security, it was necessary that Government should aid it by contributing as a shareholder to its capital, and by sharing in its direction and in the privilege of voting. Upon this footing the Bank of Bengal was opened in 1806, and obtained its charter in 1809. Its capital was then £500,000, of which the State contributed £100,000. The capital was from time to time increased, and now stands at £2,200,000, of which £220,000 belong to Government. Up to 1854, the Secretary was, with one exception, a member of the Civil Service. Thus constituted, the Bank of Bengal has well answered its object. It has proved a useful auxiliary to the State and to the mercantile community, and in seasons of difficulty has often afforded substantial assistance and valuable support to the Exchequer.

"The Presidency Bank of Madras was incorporated by Act IX of 1843, superseding an already existing State Bank. It also has proved, though on a much smaller scale, a useful institution.

"The Bank of Bombay was first constituted by Act III of 1840, but it came to a disastrous ending. As is now matter of history, it suffered severe losses in the wild and excited speculation which followed on the American war, and the rise in the price of Cotton; and in 1868 it was voluntarily wound up. The new Bank of Bombay, Limited, rose upon its ruins, being constituted by Articles of Association under the Indian Companies Act of 1866.

"A Commission was appointed by the Government of India to enquire into the causes of failure of the Bombay Bank, and in 1869 this Commission furnished an elaborate report of the results of the investigation. The majority consisting of Sir Charles Jackson the President, and Mr. Maxwell Melville, were of opinion that Government should retire from its position as shareholder. Major Innes on the contrary considered the position an expedient one. Sir Charles Jackson's argument was that the partnership of Government and its

participation in the direction of its business afforded no real security against disaster; and that the Government Directors, having other important duties of their own to perform, had not the leisure (and not always the special qualifications) to enforce an effective and vigilant control. The connection, while thus giving no material protection, was looked upon by the outside world as an all-powerful guarantee; and in the event of failure, the discovery that that guarantee was worth nothing must create wide-spread dissatisfaction, as it really did in the case of the Bombay Bank. In short, there was an apparent, but not any real, responsibility. Further it was urged that the necessity for connection with the State no longer existed; it might have been expedient or even indispensable in the poverty of mercantile resources at the beginning of the century to support the credit of the Bank by Government capital and direction. But this had long ceased to be the case, and there were now abundant materials, altogether apart from the State, for banking upon a secure and independent basis. And even supposing a Bank to be needed for the transaction of the business of Government and the custody of its balances, sufficient security could be obtained by legal checks and restrictions upon a private Bank, without the State becoming itself a shareholder.

"The position thus contended for has been accepted by Her Majesty's Government. Various opinions have prevailed upon it, and much discussion. For my own part, I agree in the conclusion that has been come to as upon the whole the most wise and expedient. But in truth the subject is now beyond the range of discussion. The separation has been deliberately resolved upon by the highest Authority; and it only remains to provide measures for giving effect to it, and for the constitution of new Banks independent of the Government, but on so secure a basis that they can be used by Government for the purposes of the Exchequer.

"Such being the case, it has become necessary to provide for the disposal of the shares of Government and to remodel the Acts of incorporation; and the opportunity is taken to make one Act under precisely the same conditions applying to all the three Banks. Although the State will no longer be a shareholder in the Banks, it will still be a depositor; all payments to or by Government at the several presidencies will be paid by or to the respective Banks, which, as Bankers of the State, will transact the business of Government at the presidencies. The provisions on this head will be found under section 11 of the Bill. These provisions render it necessary that the interests of the public should be secured by certain legal safeguards and restrictions on the kind of business to be transacted by the Bank and the mode of its transaction, by the

power of inspection on the part of Government, and by the periodical publication of the state of the Banks' assets and balances. At the same time such relaxations in the existing law as have been found compatible with safety have been admitted.

"The Bill which I now introduce is based upon a draft drawn by the New Bank of Bombay in 1872; and it has been subjected to very careful and anxious revision in the Financial and Legislative Departments. Advantage has been freely taken of the criticisms received from the directors of the three Banks. Further suggestions will no doubt be advanced by the directors and others while the Bill is before the Select Committee; and they will there receive the fullest consideration, with the aid which I trust we shall obtain from my hon'ble friends the mercantile members of the Council. The Bill is in itself much more elaborate and systematic than any of the previous enactments, and it may be hoped will prove well adapted for its object. If passed into law, I have every confidence that it will afford a full security and yet ample liberty of action.

"The chief relaxations in the mode of conducting business are these :—

"The Banks may invest in Railway stock, debentures or shares of Railway or other Companies of which the interest has been guaranteed by Government (section 9, (*a*) clause 3). They may similarly invest in the debentures of legally constituted municipalities (clause 4). The advance of money is no longer restricted to goods 'not of a perishable nature;' it is left in the discretion of the Banks whether the goods are of a nature to warrant advances or not, without any risk of a breach of the law (clause 5). Lastly, branches may be opened anywhere within the respective presidencies at discretion and with no need of Government sanction (section 15).

"In this last section (15) it has been provided that the agency of the Bank of Bengal now in Bombay shall not be disturbed. The Council are aware that much controversy has existed between the New Bank of Bombay and the Bank of Bengal in respect of this agency; and it has been finally decided by Her Majesty's Government not to insist upon its withdrawal. The scope of this agency is limited to what has been hitherto its object, namely, the transaction of the business proper of the Bank of Bengal, and it will not interfere with the functions of the Presidency Bank beyond those limits. The new Bank has flourished notwithstanding the existence of this agency, and there is no reason to apprehend any injury to it from the same cause in the future. I may add that should permission be at any future time given to the Bank of Bombay

to establish a corresponding agency in Calcutta, it will be under precisely the same restrictions, for the imposition of which due power has been reserved in section 15.

"Two new restrictions on the scope of the Bank's business may be noticed as having been based on the experience gained from the failure of the Bombay Bank and the suggestions of the commission. One is the prohibition of discounting securities supported by only one name (section 10 (e)), the expediency of which, as bearing on safe banking, needs no illustration. The other is that advances (other than those upon security authorised by the Bill) are limited in respect of any single person or firm at any one time to Rs. 6,00,000. On this subject Sir Charles Jackson wrote—

"'It would be advisable, considering the pressure brought to bear on Directors in such mercantile communities as Bombay, that the Indian Act should mention some limit beyond which no person, firm or company should be under advance. The limit mentioned in the old Bombay Act (III of 1840) of three Lakhs for individual firms is rather low for these days, and it is clear that the bills of the large Indian Banks might safely be taken for a larger amount.'

"Following this opinion, and after careful deliberation, the amount has been doubled and the limit enlarged to six Lakhs.

"The terms of the contracts between Government and the Banks are still under negotiation; but no difficulty is apprehended in the settlement of such conditions as shall be readily accepted both by Government and by the Banks.

"Among the details which will come before the Select Committee is one which I may here allude to. The shares have been lowered in amount, and it is not improbable that this may have the effect of bringing in a larger number of the holders of small shares. In the schedule of votes, a number of small capitals held separately by different shareholders carry a larger voting power than a much greater capital singly held. It will be considered whether greater weight than at present should not be given in the scale of votes to the larger capitals.

"These are all the remarks which it occurs to me to make upon the Bill. A new era now opens for the Presidency Banks. They emerge from Government control. Only so much inspection is insisted on as will satisfy the Government that the requirements of the Act are being carried out, and that its balances are safe under the Bank's custody. At this juncture it is right that, on the part of Government, I should acknowledge the valuable services which have been rendered by the Banks as heretofore constituted, and specially by the

most important of them, the Bank of Bengal, to Government, and likewise the useful position they have occupied in aiding—what really constitutes the prosperity of the State—the interests of the commercial community of India. The Banks have no doubt done good business for themselves, and upon the whole yielded to their shareholders excellent returns on the capital invested. But their good management and their success in this respect is no reason why the State should not acknowledge its obligations for the benefits which it has received from association with them.

"And there is every reason to hope and trust that in the future these benefits will not be lessened, and that, under a more perfect definition of the limits of safe business and of legal responsibilities and obligations, greater liberty of action may be exercised without any reasonable risk of disaster; and the securities of the law prove no bar to financial success."

The Hon'ble MR. BULLEN SMITH said that connected as he was with one of the three Presidency Banks of which Sir William Muir had just been speaking, it would scarcely be possible to allow the motion to pass without expressing the great satisfaction which he felt at the introduction of the Bill, which promised to put an end to a certain amount of anxiety and uncertainty which had for a long, although perhaps unavoidable, period existed as to what were to be the precise relations of Government with the Presidency Banks in future, and the conditions upon which those institutions were to conduct their business. He had listened with great interest to all that had fallen from the hon'ble member as to the rise and progress of these Banks, and although he (MR. BULLEN SMITH) conceived there might be difference of opinion as to whether or not there did exist at the present time a real necessity for the severance of that connection which had so long and with such great advantage subsisted between the Government and these Banks, yet he was for his part somewhat careless to enquire as to the precise need for that severance. The Banks had derived great advantage from that connection in times past, but he thought the moral support which the Government lent to the Banks, besides its material support, was now no longer required. He thought these institutions were now in a position to go on alone, which they were not at the time of their original establishment, and that support, which was in the early days almost necessary, was now no longer required.

As to the Bill itself, he was quite prepared to say that in most particulars he was content with it. There were one or two sections which he thought were too strictly drawn, inasmuch as he believed it would be found that, in regard to the amount of capital available and business transacted,

conditions which applied with equity and propriety to one might not with equal equity and propriety apply to others. These, however, would be matters for discussion in Committee, and he was quite sure that anything which might be said from his point of view and that of others would receive the utmost attention.

In conclusion, he desired especially to express his high approval of, and the pleasure with which he had read, section 15 of the Bill, establishing legally the agency of the Bank of Bengal at Bombay. That agency, it was not too much to say, had during several years been assailed with great bitterness and determination. Attempts had been made repeatedly to procure its removal, and assertions made that it was carrying on other than its own legitimate operations. An enquiry was made by the Government of India some time ago into these allegations, and the fact that the agency of the Bank of Bengal had not been prohibited from remaining in Bombay was, he presumed, sufficient evidence that the Government was satisfied that the charges were unfounded, and that the agency was not acting as a branch, but was doing the work for which it was established, and that only. Still he welcomed this section, because its introduction into the Bill seemed to proclaim in a public manner that the Bank of Bengal had not gone to Bombay under false pretences, that it had not asked leave to do one thing and done another, that the agency was acting strictly within its functions as such, and that the Bank had in all loyalty and good faith confined its operations in Bombay to the purposes for which it sought and obtained permission to establish an agency in that city. With these observations he had much pleasure in supporting the motion.

The Hon'ble RÁJÁ NARENDRA KRISHNA BAHÁDUR said that the Bill proposed to confirm the sale of the shares held by the Government in the Banks of Bengal and Madras to the private proprietors of these Banks; or, in other words, the Government wanted to modify materially its connection with them. Since the establishment of these Banks their affairs (he alluded especially to the Banks of Bengal and Madras) had been managed partly by experienced Civilians appointed by Government, and partly by influential members of the mercantile community. The banking business, under their joint management, had generally prospered. The exercise by Government of a healthy control over the Banks had hitherto supplied a firm foundation for the unbounded confidence of Native and European shareholders, as well as of the public at large. The present Bill, by upsetting, to a very great extent, this long existing wise arrangement, would take away a powerful safeguard, unsettle a variety of interests, and seriously affect many existing transactions. He

need only specify the existing practice of most Natives, and, he believed of the Europeans, preferring to deposit money in these Banks instead of in other Banks, although the latter allowed a certain interest on the deposits. He might also be allowed to observe that financial schemes of great magnitude in this country, which had not enjoyed the supervision of Government, had generally collapsed. The Government, indeed, had, with a due regard to the principles he had touched upon, made certain salutary provisions, as explained in the concluding paragraph of the Statement of Objects and Reasons of the Bill; but he would suggest the propriety of associating a competent Civilian with the executive functionaries of the Banks, without which, he feared, the existing unlimited confidence of the public in the transactions of the Banks could not remain intact. Although the Government would cease to have any direct pecuniary concern in the Banks, yet, as they would be empowered to act as bankers for the Government, it ought very legitimately to have its own responsible officer to superintend their affairs.

The Hon'ble SIR W. MUIR in a few words expressed his great satisfaction at what had fallen from his friend, Mr. Bullen Smith, and the support he had accorded to the action of the Government: he could only again assure him that every attention and consideration would be given to any suggestions or remarks that might come either from individual members of the mercantile community, or from the Directors of the Banks.

With reference to the remarks of Rájá Narendra Krishna, he trusted that the gloomy apprehensions he had expressed from the Banks not having connection with the State, or Civilians not being in their direction, would be falsified in the result, and that the carefully-drawn provisions of the Act would secure all the protection necessary for, or desired by, the public.

The Motion was put and agreed to.

The Hon'ble SIR W. MUIR also moved that the Bill be published only in English in the *Gazette of India*, the *Calcutta Gazette*, the *Fort St. George Gazette* and the *Bombay Government Gazette*.

The Motion was put and agreed to.

CALCUTTA UNIVERSITY (HONORARY DEGREES) BILL.

The Hon'ble MR. HOBHOUSE moved for leave to introduce a Bill to authorize the University at Calcutta to grant Honorary Degrees.

He said that the growth of this University had been such that, independently of any special occasion, it might be proper to consider whether they

should not have the power to grant Honorary Degrees. There was however a special occasion which this Bill was intended to meet; namely, the visit of His Royal Highness the Prince of Wales, upon whom it was proposed to confer such a Degree. But the University had no power at present to confer Degrees without examination. The Corporation was established by an Act of this Council passed in the year 1857, and in the preamble of that Act the scope of the Corporation was described as being for the purpose of ascertaining, by means of examination, the persons who had acquired proficiency in certain specified subjects, and of rewarding them by Academical Degrees as marks of honour. In the 11th section of the same Act it was provided that the University should have power, after examination, to confer the several Degrees therein specified. These were the Degrees of Bachelor of Arts, Master of Arts, Bachelor of Laws, Licentiate of Medicine, Doctor of Medicine, and Master of Civil Engineering. Those were the provisions of the Act of 1857. It was subsequently found convenient to give the University greater latitude with respect to the Degrees to be conferred; and accordingly, by an Act passed in 1860, it was provided that the University might confer such Degrees as they should appoint by any bye-laws. But it was also provided that all the provisions which were contained in the Act of 1857 with respect to the old Degrees should apply also to the new Degrees to be created under the Act of 1860. Therefore it remained the case that no Degree conferrible under the Act of 1860 could be conferred without examination. Under the powers given by the latter Act, a bye-law was passed establishing the Degree of Doctor in Law. Shortly afterwards, in the year 1862, it was a matter of discussion amongst the University authorities whether or not they should apply for power to confer Honorary Degrees. There was a good deal of difference of opinion at that time, but upon the whole the opinion prevailed that the University was too young a body to confer such Degrees, and that it would be better to wait until it had grown into a larger body before that subject was mooted. Now the growth of the University had been very rapid, and it had taken an important place in the Indian community. And he thought that when a personage in the position of the Prince of Wales came forward and expressed his readiness to be the first recipient of such a Degree, the University need not be very modest in the matter but might consider themselves competent to confer it.

As MR. HOBHOUSE was about to ask His Excellency to suspend the Rules for the Conduct of Business, it would be convenient to go on and state what were the contents of the Bill. The reasons for suspending the Rules were that the time was short, that there were many arrangements to make, and that it was desirable that the University authorities should know in what position they stood.

The object of the Bill was one as to which he should hardly anticipate any difference of opinion. The subject-matter was very simple, and the precaution had been taken to submit the draft which the Council had in their hands to the Syndicate of the University. It had been carefully examined by them, and had been approved in the form in which it stood. Therefore it was not likely that we should find errors in the draft if the Council passed it in that form. The nature of the Bill was of the simplest possible kind. It stated briefly that position of things which he had stated to the Council rather more fully, and then it provided that, with the consent of the Chancellor of the University, the Syndicate might grant any Academical Degree to any person without requiring him to undergo an examination. But it provided that the Vice-Chancellor and at least four members of the Syndicate should certify that, by reason of eminent attainments and position, he was a fit person for such Degree. The Council were doubtless aware that the executive powers of the University were managed by a body called the Syndicate, and one of these powers under the bye-laws of the University was to grant Degrees, Honours and Rewards. Therefore it was proposed that the Syndicate should grant any such Degree as the University might think fit to establish under the Act of 1860. They had established the Degree of Doctor of Laws. It was a fit Degree to confer upon His Royal Highness the Prince of Wales, and therefore it was proposed to confer that Degree upon him in the present instance. With respect to the safe-guards provided, it was not thought desirable that any very wide door should be open to persons to come in and ask for an Honorary Degree. It was therefore thought fit that a large number of the Syndicate, and the Chancellor, who stood quite independent of the Syndicate, should agree in the propriety of conferring such a Degree on any person.

His Excellency THE PRESIDENT said :—" As I have the honour, in virtue of my office, to fill the office of Chancellor of the Calcutta University, I wish to state that the object of this Bill has my entire concurrence. In fact it was owing to my own suggestion that the question of conferring an Honorary Degree of the Calcutta University on His Royal Highness the Prince of Wales was considered by the Syndicate. It appeared to me not only to be a proper compliment to offer on behalf of the University to His Royal Highness, but also a fitting occasion upon which His Royal Highness might be brought into connection with the great educational institutions of India which have attained their highest development in Calcutta. It was a matter of surprise to me to find that there was some difficulty with respect to the power of the University to confer an Honorary Degree of this nature, and the Bill which my honourable friend, Mr. Hobhouse, has asked leave to introduce to-day, has been framed simply for the purpose of removing that difficulty.

"The reasons given by my honourable friend, Mr. Hobhouse, amply justify me in suspending the Rules for the Conduct of Business, and asking the Council to pass this Bill to-day."

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. HOBHOUSE then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOBHOUSE also moved that the Bill be passed.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. HOBHOUSE also moved that the Hon'ble Rájá Narendra Krishna Bahádur be added to the Select Committee on the following Bills:—

To consolidate and amend the law relating to Pleaders and Mukhtárs:

To consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill for constituting and regulating the Banks of Bengal, Madras and Bombay——The Hon'ble Mr. Hobhouse, the Hon'ble Sir A. J. Arbuthnot, the Hon'ble Messrs. Bullen Smith, Hope and Cowie, the Hon'ble Rájá Narendra Krishna and the mover.

The Council then adjourned to Tuesday, the 21st December 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 14th December 1875.

Office Supd. Govt. Printing.—No. 192 L D.—21-12-75.—230.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, on Tuesday, the 21st December 1875.

PRESENT:

His Excellency the Viceroy and Governor General of India, G. M. S. I., *presiding*.

His Honour the Lieutenant-Governor of Bengal.

Major-General the Hon'ble Sir H. W. Norman, K. C. B.

The Hon'ble A. Hobhouse, Q. C.

The Hon'ble E. C. Bayley, C. S. I.

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble Sir A. J. Arbuthnot, K. C. S. I.

Colonel the Hon'ble Sir Andrew Clarke, R. E., K. C. M. G., C. B.

The Hon'ble John Inglis, C. S. I.

The Hon'ble Sir Douglas Forsyth, C. B., K. C. S. I.

The Hon'ble Ashley Eden, C. S. I.

The Hon'ble T. C. Hope.

His Highness Mahárájá Iswaríparshád Náráyan Singh Bahádur, Benares.

The Hon'ble D. Cowie.

The Hon'ble Rájá Narendra Krishna, Bahádur.

INDIAN TELEGRAPH BILL.

The Hon'ble MR. HOBHOUSE presented the Report of the Select Committee on the Bill to amend the law relating to Telegraphs in India.

STAMPS AND COURT FEES BILL.

The Hon'ble MR. INGLIS moved for leave to introduce a Bill to consolidate and amend the law relating to Stamps and Court Fees. He said that the main object of this Bill was to consolidate into one compact and clearly expressed enactment the law relating to Stamps and Court Fees, which was now scattered over nine or ten Acts, a large number of notifications of the Government of India, and several decisions of the High Courts—a state of things which was necessarily productive of great inconvenience to the public. At the same time advantage had been taken to settle certain points of doubtful law, and clear up certain difficulties which had been felt

in the construction of Act XVIII of 1869. He would not take up the time of the Council by making any further remarks on the present occasion, but would reserve what he had to say in explanation of the provisions of the Bill till he introduced it, if the Council would give him permission to do so.

The Motion was put and agreed to.

REFORMATORY SCHOOLS BILL.

The Hon'ble SIR A. J. ARBUTHNOT moved that the Hon'ble Rájá Narendra Krishna be added to the Select Committee on the Bill to provide Reformatory and Industrial Schools. He said it seemed desirable that a Native member of the Council should be on the Committee on that Bill.

The Motion was put and agreed to.

The Council then adjourned to Tuesday, the 4th January 1876.

CALCUTTA,
The 21st December 1875.

WHITLEY STOKES,
Secretary to the Government of India,
Legislative Department.

Office of Supdt. of Govt. Printing,—No. 218 L. D.—23-12-75.—230.

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